TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 52.

TITUS BUFFINGTON, APPELLANT,

vs.

CHARLES D. HARVEY, ASSIGNEE OF ISAAC FITZGERREL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.

FILED FEBRUARY 25, 1875.

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1 Pleas in the circuit court of the United States of America for the southern district of Illinois, held at the city of Springfield, in said district, before the Hon. Samuel H. Treat, district judge of said district, and in the absence of the Hon. Thomas Drummond, judge of the seventh judicial circuit, pro tempore sole judge of said circuit court, on Tuesday, the twenty-fourth day of February, in the January term of said court, in the year of our Lord one thousand eight hundred and seventy-four, and of our Independence the ninety-eighth year.

J. A. JONES, *Clerk.*

CHARLES D. HARVEY, ASSIGNEE OF ISAAC FITZGERREL, a bankrupt, *v.* TITUS BUFFINGTON. } Chancery.

SOUTHERN DISTRICT OF ILLINOIS, *ss:*

2 Charles D. Harvey, of Springfield, in said district, assignee of the estate of Isaac Fitzgerrel, a bankrupt, who is a citizen of said southern district of Illinois, brings this his bill of complaint against Titus Buffington, also a citizen and resident of said district of Illinois.

SOUTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that heretofore, to wit, on the twentieth day of March, in the year of our Lord one thousand eight hundred and seventy-two, came said assignee in his own proper person, and filed in the clerk's office of said court his bill of complaint against the said defendant, praying the issue of a writ of subpœna against the said defendant, returnable on the first Monday in the month of May next, which said bill of complaint is in the words and figures following, to wit:

Circuit court of the United States for the southern district of Illinois, in the 8th judicial circuit.

Bill.

To the judges of the circuit court of the United States for the southern district of Illinois, in the eighth judicial circuit.

3 Charles D. Harvey, of Springfield, in said district, assignee in bankruptcy of Isaac Fitzgerrel, a bankrupt, a citizen of the State of Illinois, brings this his bill of complaint against Titus Buffington, of Xenia, a citizen of the State of Illinois in said district, and hereupon your orator complains, and says that your orator is assignee of the estate and effects of Isaac Fitzgerrel, a bankrupt according to the force, form, and effect of the statu'es concerning bankrupts, and was duly appointed such assignee by Lawrence Weldon, one of the registers in bankruptcy for said southern district of Illinois, on the day of A. D. 1871, in a proceeding in involuntary bankruptcy commenced on the petition the creditors of said Isaac Fitzgerrel, and on the day of , A. D. 187 , did receive from the said L. Weldon, as such register, an assignment of all the estate, both real and personal, of said bankrupt, which said deed was duly issued by said register under the seal of said district court. That said Isaac Fitzgerrel, before he became a bankrupt, that is to say, on or about the 30' day of December, A. D. 1867, was the owner of the following-described real estate and personal

property in the county of Wayne and State of Illinois, in said district, to wit: The southeast quarter of section nine, (9,) and the west half of the southwest quarter of section ten, (10,) in township one (1) south, range eight (8) east, except one-half (½) acre heretofore set
4 apart for a family burying-ground; also a strip of forty (40) acres off the south side of the whole strip, heretofore conveyed to James A. McLin; also the undivided one-half (½) of the northeast quarter (¼) of southwest quarter, (¼,) and the southwest quarter (¼) of the southeast quarter (¼) of section twenty-two, (22,) township one (1) north, range six (6) east; also the northeast quarter (¼) of the northeast quarter (¼) of section four, (4,) town. two (2) south, range eight (8) east; also the north half of the southeast quarter of section thirty-three, (33,) town. one (1) south, range eight (8) east of 3d p. m.; also lot No. nineteen, (19) in original town of Fairfield; also lot No. seventeen (17) in the original town of Fairfield; also lot No. two (2) in Barnhill's addition to town of Fairfield; also a tract of land described as follows, to wit: beginning in the dividing-line between the northeast and the northwest quarters of section six, (6,) in town. two (2) south, of range eight, (8,) at a small cherry tree twenty-eight and one-half (28½) rods north from the northwest corner of lot No. eight, (8,) in the town of Fairfield; thence running due east until it intersects the first small ravine; thence
5 down said ravine to the middle of Johnson Creek; thence down said creek until it reaches the mouth of the second branch that empties into Johnson Creek on the north side; thence north with said branch to the north line of the northeast quarter of section six, (6,) township two (2) south, range eight (8) east; thence with said line to the northwest corner of said quarter section; thence south to the place of beginning, excepting one acre and one quarter acre now needed as a cemetery; also excepting five acres heretofore sold to the agricultural society for a fair ground; also excepting two acres heretofore sold to James B. Ardery, valued at about $12,000.00; also stock of goods valued at about $2,500.00; a lot of cattle, horses, and mules, the number and value of which is unknown to your orator.

That thereafter, on the same day, as your orator is informed and believes, the said Isaac Fitzgerrel, in contemplation of insolvency, combining and confederating with the defendants and one J. H. McCartney, to put his property out of his hands, so as to hinder and delay his creditors, and to defeat the operation of the bankrupt law now in force, did, with Martha Fitzgerrel, his wife, execute and deliver to one Titus Buffington, the defendant herein, who was friend and neighbor of
6 the said Fitzgerrel, a conveyance of all the above-described real estate for a pretended consideration of $7,950.00, when said lands were in fact worth a much larger sum of money. And the same Isaac Fitzgerrel did also, at the same time, make a pretended sale to the said Titus Buffington of all the above-described personal property, which said sales comprised all the estate, both real & personal, of the said Fitzgerrel which was liable to creditors or an execution. That no bona fide consideration was ever paid by the said Buffington on said sales or either of them, but that it is pretended by the said Buffington that, in payment for said property, he executed and delivered to the said Fitzgerrel his promissory notes, bearing 6 per cent. interest, and payable as follows, that is to say, a certain portion of said notes were to be paid each year, commmencing about the 1st of January, 1869, for the first payment, and the last to be made in 1874; that no security was given to secure the payment of the several sums of money mentioned in said notes; all of which your orator believes to be false.

Your orator further shows unto your honor that since the pretended conveyances of said lands were executed, the said Fitzgerrel has ever occupied and is now in possession of all of said lands, and has had
7 full control of the same, and has been occupying or renting to tenants all of said lands with the buildings thereon, and has collected from said tenants all the rents therefor, and has paid taxes, paid off incumbrances & insurance, and made improvements on said premises the same as if he were the owner in fee, and has never accounted to said Buffington or to any one for the rents so collected from said tenants; neither has he, the said Fitzgerrel, paid any rent for the use of the said premises, which he has used and occupied since said conveyance before described.

Your orator further shows that there has never been any lease, contract, stipulation, or agreement for any definite rent, nor has there been any settlement or accounting between the said Fitzgerrel & said Buffington for said premises so occupied and rented, as above described, from said 30' day of Dec., 1867, to Jan'y 1st, A. D., 1872.

And your orator further shows unto your honors that no delivery of the personal property was ever made under and by virtue of said pretended sale, but that the said personal property above described and included in said sale was left under the control & in the possession of
8 the said vendor, who afterwards, as before said pretended sale, used, sold, and disposed of the same for his own benefit, and has never paid to, accounted for, nor been called to account for the same or for the proceeds thereof, or any part of the same by the said Buffington, his agent or attorney, although all of said property, with the knowledge of said Buffington, has been long since disposed .

And your orator further shows unto your honor that he is informed and believes that the said Isaac Fitzgerrel, if he ever did receive from said Buffington the notes above described, did afterwards indirectly surrender the same to the said Buffington, his agent or attorney, by the hand of J. H. McCartney, who was his attorney in making said conveyance, and by others to your orator unknown; that said notes have never been paid by said Buffington, nor have they been presented for payment, although several thousand dollars, with the interest thereon, has long since become due, and which is now unpaid.

And your orator further shows unto your honors that, since the above pretended sale & conveyance, the said Buffington has disposed of all his real estate and personal property which he held at the time of
9 said conveyance, and at the present time has about $3,600.00 worth of notes due himself from Joshua Davis and less than $1,000 worth of personal property, which said property, your orator is informed, is all the assets of the said Buffington, aside from the real estate received from said Fitzgerrel and above described, a part of which, your orator is informed, has been sold by said Buffington.

That there is now due from the said Buffington, as represented by said notes, between twelve and fifteen thousand dollars, as your orator believes, which principal and interest is yet unpaid, and that the notes for $3,600, with *with* the personal property last above described, is insufficient to pay your orator for the personal property above described as included in said pretended sale to said Buffington and for payment of the rent on said described real estate during the period he has pretended to own the same.

And your orator charges that the conveyances and the pretended sale from the said Fitzgerrel to the said defendant were not in the usual and ordinary course of the business of said Fitzgerrel or said defendant, and was a fraud upon the provisions of an act of Congress entitled "An

10 act to establish a uniform system of bankruptcy," approved March 2, 1867, and the amendments thereto; that the said defendant, combining and confederating with the said Fitzgerrel, did accept said conveyances and the pretended transfer of said personal property, intending thereby to hinder the creditors of the said Fitzgerrel from collecting their debts and to defeat the operation of said bankrupt act.

To the end, therefore, that the said defendant, if he can, show why your orator should not have relief hereby prayed, and may, upon his corporal oath and according to the best and utmost of his knowledge, remembrance, information, and belief, full, true, direct, and perfect answers make to all and singular the matters hereinbefore stated and charged as fully and particular' as if the same were hereinafter repeated, and that the conveyance above referred to may be set aside as null and void, and said property become assets of said bankrupt's estate, and that said defendant may be required to give a fair and just value for said personal property and for the use of said premises upon a fair accounting, and may be restrained from disposing of the property above described for the purpose of defeating the object and intention of
11 this bill, and for such other and further relief in the premises as the nature of the case shall require and to your honors seem meet, may it please your honor to grant unto your orator the writ of injunction issuing out of and under the seal of this honorable court, or issued by one of your honors, according to the statu'es in such case made and provided, directed to the said Titus Buffington, his agent or attorney, commanding, enjoining, and restraining them and each of them from selling, transferring, or disposing of the real estate above described; also from collecting, transferring, or in any way disposing of said notes, due him from the said Joshua Davis, until the further order of this honorable court.

And may it please your honor to also grant unto your orator a writ of subpœna of the United States of America, issuing out of and under the seal of this honorable court, directed to said Titus Buffington, defendant, commanding him on a certain day, therein to be named, and under a certain penalty therein, to be and to appear in this honorable court, then and there to answer all and singular the premises, and to stand, perform, and abide such further order, direction, and
12 decree as may be made against him; and your orator, as in duty bound, will ever pray, &c.

CHARLES D. HARVEY.

Subscribed and sworn to before me this 19th March, A. D. 1872.

J. A. JONES, *Clk.*

(Indorsed:) Filed March 20th, A. D. 1872.

J. A. JONES, *Clk.*

Whereupon a writ of subpœna was issued as prayed, directed and delivered to the marshal of said district to execute, returnable on the first Monday in the month of May next, which said writ is in the words and figures following, to wit:

Subpœna.

UNITED STATES OF AMERICA,
Southern District of Illinois, ss:

The United States of America to Titus Buffington, greeting:

We command you, and every of you, that you appear before our

judge of our circuit court of the United States of America for the southern district of Illinois, at Springfield, in said district, on the first Monday in the month of May next, to answer the bill of com-
13 plaint of Charles D. Harvey, assignee of Isaac Fitzgerrel, in bankruptcy, this day filed in the clerk's office of said court, in said city of Springfield, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the southern district of Illinois to execute.

Witness the Hon. Salmon P. Chase, Chief-Justice of the Supreme Court of the United States of America, at Springfield, aforesaid, this twentieth day of March, in the year of our Lord one thousand eight hundred and seventy-two, and of our Independence the ninety-sixth.

[SEAL.] J. A. JONES, *Clerk.*

Memorandum.

The above-named defendant is notified that unless he shall enter his appearance in the clerk's office of said court, at Springfield, aforesaid, on or before the day to which the above writ is returnable, the complainant's bill will be taken against him as confessed, and a decree entered accordingly.

J. A. JONES, *Clerk.*

I hereby appoint W'm Littlejohn my special deputy to execute this writ.

M'ch 20, 1872.

EDWARD R. ROE,
U. S. Marshal.

Executed this writ on the 26th day of March, A. D. 1872, by delivering a true copy of the same to the within-named Titus Buffington.

EDWARD R. ROE,
U. S. Marshal.
By W'M LITTLEJOHN,
Special Deputy.

14 Afterwards, to wit, on the sixth day of May, in the year of our Lord one thousand eight hundred and seventy-two, the following proceedings were had in said court, in said entitled cause, and entered of record, to wit:

CHARLES D. HARVEY, ASSIGNEE, &C., *vs.* TITUS BUFFINGTON. } In chancery.

This day comes the defendant, by Mess'rs John E. Rosette and Brother, his solicitors, and entered his appearance therein.

And afterwards, to wit, on the tenth day of June, in the year aforesaid, came the said defendant, by his solicitors, and filed in the clerk's office of said court his answer to the complainant's bill of complaint herein, which said answer is in the words and figures following, to wit:

Answer.

Circuit court of United States within and for the southern district of Illinois, in the 8th judicial circuit.

UNITED STATES OF AMERICA:

The answer of Titus Buffington, the defendant, to the bill of complaint exhibited him by Charles D. Harvey, assignee in bank-
15 ruptcy of Isaac Fitzgerald, the defendant, now and at all times hereafter saving to himself any and all manner of benefit or advantage of exception and otherwise that can or may be taken or had to the many uncertainties and imperfections in the said bill contained, for answer thereto, or so much thereof as this defendant is advised it is material or necessary for him to answer, answering saith that he is informed and believes that the plaintiff hath been appointed assignee of the said Isaac Fitzgerralds, or as the said bill states.

Further answering, that on the *the* 31' day of December, A. D. 1867, the said Fitzgerald was the owner in fee-simple of the land and lots set up and described in the said plaintiff's petition, and that according to the best of his recollection the said lands and lots are properly described in the plaintiff's bill herein filed.

Defendant, further answering, says that true it is that he did purchase from the said Isaac Fitzgerald the land and lots in the bill described, and agreed to pay for the same the sum of seven thousand nine hundred and fifty dollars, $8,580.00; that said purchase was made on or about the 31' day of December, A. D. 1867, for said amount mentioned;
16 the said sum of , so agreed to be paid, was a fair and reasonable price for said lands and lots aforesaid; that he paid for said lands and lots as follows, to wit: That he paid fifty dollars in cash at the time the trade was made, and the balance of said purchase-money he gave notes payable as follows, to wit, giving his notes for the balance of said purchase-money, dividing it into payments yearly, three notes to be *be* paid 1st day of January, A. D. 1869; balance of said notes to be paid yearly, running till A. D. 1874.

And that this respondent further answers that he has paid some of said notes, one of them at the end of a judgment, and the interest on another, by agreement with the party holding the note, and that has paid some of the other notes that are now due; and further, that all of said notes have been transferred and indorsed by the said Fitzgerald; and this respondent now knows who holds a part the said notes, and that the parties who holds said notes expect to hold this respondent for the full payment of said notes.

Further answering, says the purchase of said lands, lots, &c., was made in good faith and for a fair valuation; that so far as this petitioner was concerned then neither fraud in fact nor fraud in contemplation, nor did this petitioner know or have cause to think or be-
17 lieve that Fitzgerald was involved, nor does this petitioner believe as a matter of fact that the said Fitzgerrel at the time was unwilling or unable to pay his debts, and that all the allegations of said bill that he knew or had reason to believe that the said Fitzgerrel had in contemplation any act of bankruptcy are entirely and positively false, and without the least show or foundation in truth.

Further answering, says that he gave all the notes set forth, paid all that are now paid in good faith, & owes the balance, and was then and has been from that day abundantly able to pay the said notes; that said Fitzgerrel did not ask or desire this respondent to secure the pay-

ment of said notes by mortgage or otherwise, or at the time the trade was made, nor has any one since who held said notes asked or requested this respondent to give security for the payment of the same; that he was compelled to pay of said notes after the same had been transferred by the said Isaac Fitzgerald by a suit in court; that he would have had paid said note without suit had it not been for them proceedings in bankruptcy in the case of the said Fitzgerrel.

18 Further answer, that after the sale to this respondent the said Fitzgerrel never pretended to own or control the said lands, &c., only as he was acting under the direction and as the agent of this respondent.

That respondent, further answering, says that he permitted the said Fitzgerrel to use and control some of said land the same as he would any other tenant or agent, and that if the said Fitzgerrel ever did pay any taxes on the said land or lots, the same was paid with this respondent's money and at his request, and not otherwise.

And this respondent, further answering, says that on two or three occasions that he gave the said Fitzgerrel the money and desired him to pay the taxes for him on said land & lots, and that all these things were done at the request of this respondent and not otherwise; that this respondent and the said Fitzgerrel have had and made partial settlements in reference to the use and occupation of the said lands.

This respondent, further answering, says that the said Fitzgerrel neither did not own, or with the knowledge of this respondent pretend to own, the said lands or lots or any part thereof of the said sale.

19 Further answering, says that true it is that this respondent did, on the 31st day of December, A. D. 1867, purchase from the said Isaac Fitzgerrel the stock of goods owned by the said Fitzgerrel and in his possession at the time that said stock of goods consisted of such as are generally kept in a country store and in amount as described as set up in said bill of invoice hereto attached and made part of this answer; that immediately on the purchasing of said stock of goods this respondent took the actual possession of the said goods and placed a person in the store, who proceeded to sell the same at retail prices, with the intention of going into the merchantile business in said place; that he had not been in business but a short time, say from the first day Janua'y, 1868, until the 18th day of April of said year, when, by the order of this honorable court, was enjoined from selling or disposing of the said goods or chattels; that said order of injunction was issued on the petition of Henry Bell & Sons, filed in the district court for the southern district of Illinois against the said Isaac Fitzgerrel and Titus Buffington, seeking to declare the said Fitzgerrel a bankrupt; that such proceedings were had on the petition against this respondent on the said goods were pur-

20 chased from the said Fitzgerrel, and that the said injunction against this respondent was dissolved at the term of the court, A. D. 18 , and this respondent, supposing that the was fully settled, disposed of the said goods.

That this respondent made the purchase of the said goods and chattels in good faith, without any knowledge that the said Fitzgerrel was indebted to that extent that he could not pay, but supposed him to be in good circumstances; that such was the supposition at the time when he was doing business, and at the time when this respondent made the purchase from him of the said goods; that this respondent paid the full invoice price of said goods and chattels at the time he purchased the same, and that the said purchase was made in good faith without any intention on the part of this respondent to defraud, or with intent to

hinder or delay the creditors of the said Fitzgerrel, and that all allegations in the said bill charging this respondent with bad faith or an intention to defraud the creditors, or to hinder or delay them, or with any knowledge that the said Fitzgerrel was in failing circumstances at that time, are not true, are false and made without any foundation or
21 truth, and, as this respondent says, without any proper or sufficient evidence.

Respondent further answers that true it is that he did purchase of the said Fitzgerrel some live stock that was on the farm at the time he purchased it, to wit, some three or four head of young cattle, some three horses & two young mules, and that he took the horses and mules to his home farm and kept them until the next spring, and then put them back on the farm bought of the said Fitzgerrel; that after the crop was put in that the said stock was sold by his direction, a part of it by the said Fitzgerrel, and some of it by one *a* Mr. Washington.

And this respondent, further answering, says that all of said stock has been accounted for to him by the parties that sold it, with the exception of one horse that died before the said disposal of said stock.

Respondent further says that Fitzgerrel never exercised any control over said stock except as his agent or tenant, or applied any of the proceeds of said sale to his use or benefit, with this respondent's knowledge.

Further answering, says that all the allegations in the said bill in relation to the surrendering of the notes given by the respondent
22 to the said Fitzgerrel are absolutely untrue, and positively without any foundation. That this respondent paid the notes, as heretofore set forth and stated in this answer, and with reference the said portion of his answer to what was done and what became of the said notes, that said J. H. McCartney, nor *no* other person, ever delivered either of said notes to this respondent, nor to any person for him, until the same were paid in full, both principal and interest; and all allegations in the said bill contrary to the above statement are entirely untrue.

This respondent further answering, that true it is that he did sell a farm to Joshua Davis, but not with the intention of putting his property out of the reach of any one entitled to any judgments or debts of him, but that had held said farm for sale, desiring to sell said farm, intending to go into some other kind of business; that he sold the said farm for the price he asked for it.

Further answering, this defendant says the statements in said bill charging him with selling and disposing of said farm for the purpose of putting his property out of his hands, are wholly untrue and without foundation.

Respondent, further answering, says the invoice of the said stock
23 of goods that he bought of the said Fitzgerrel amounted to two thousand five hundred and twenty-two dollars, and that he does not now owe the said Fitzgerrel anything on said stock of goods that is aware of.

Respondent, further answering, says that there is now owing on the said notes given by this respondent for the purchase of the land and lots about the sum of six thousand five hundred dollars, and this respondent is not informed who is the owner—all of the said notes not yet due; and whether the said Fitzgerrel owns them or not at this time this respondent does not positively know; but to the best of his knowledge the said Fitzgerrel has disposed all of them.

This respondent, however, avers that he is able to pay said notes when they become due to whomsoever they may belong; that there is not

more than the said notes; that he does not owe the sum of fifteen thousand dollars, nor never did, to the said Isaac Fitzgerrel, or any other person; that this respondent does not owe the said Fitzgerrel any am't. For respondent further answering says it is not true that the sale made to this respondent was fraudulent; but, on the contrary, the same was made in good faith, and not with a view to defraud any person or persons whosoever.

24 And this defendant denies and all manner of unlawful combination and confederating wherewith he is by the said bill charged; and that, if there is any other matter, cause, or thing in said complainant's bill of complaint contained material or necessary for the defendant to make answer to, and has not here and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the best of his knowledge or belief of this defendant. All of which matter and thing this defendant is ready and willing to maintain and prove to *to* this honorable court.

And prays that this injunction herein may be dissolved, and that he may be dismissed with his reasonable cost and charges in this behalf.

TITUS BUFFINGTON.

STATE OF ILLINOIS,
Clay County, ss:

Sworn and subscribed to before me this 3d day of June, A. D. 1872.
[SEAL.] J. O. BURTON, *N. P.*

(Indorsed:) Filed June 10th, 1872. J. A. Jones, cl'k.

25 Afterwards, to wit, on said tenth day of June, in the year aforesaid, the following further proceedings were had in said court in said entitled cause and entered of record, to wit:

Order overruling motion to dissolve injunction.

CHARLES D. HARVEY, ASSIGNEE, &C., *vs.* TITUS BUFFINGTON. } In chancery.

This day came the parties, by their solicitors, and the defendant moves to dissolve the injunction herein, and the court having heard argument thereon, and being sufficiently advised in the premises, overrules the said motion.

And afterwards, to wit, on the twenty-seventh day of June, of the year aforesaid, came the complainant herein, and filed in the clerk's office of said court his exception' to defendant's answer herein, which said exception' are in the words and figures following, to wit:

Exceptions to defendant's answer.

Circuit court United States, southern district of Illinois, in the seventh judicial circuit.

26 CHARLES D. HARVEY, ASSIGNEE OF Isaac Fitzgerrel, bankrupt, *vs.* TITUS BUFFINGTON.

Exception taken by the said complainant to the insufficient answer of the said defendant to the said complainant's bill of complaint.

For that the said defendant has not, to the best of his knowledge,

remembrance, information, and belief, answered and set forth whether the said Isaac Fitzgerrel, in contemplation of insolvency, combining and confederating with the defendant and one James H. McCartney to put his property out of his hands, so as to hinder and delay his creditors and to defraud the operation of the bankrupt law now in force, did, with Martha Fitzgerrel, his wife, execute and deliver to one Titus Buffington, the defendant herein, who was a friend and neighbor of the said Fitzgerrel, a conveyance of all the real estate described in said bill of complaint, for a pretended consideration of $7,950, when said lands were in fact worth a much larger sum of money, or whether said lands were in fact worth a much larger sum of money.

27 For that the said defendant hath not, in manner aforesaid, answered and set forth whether or not any bona-fide consideration was ever paid by said Buffington on the said sale of real estate and personal property, or either of them, in said bill of complaint mentioned; or whether, in payment of the real estate in said complainant' bill described, he executed and delivered to Isaac Fitzgerrel his promissory notes, bearing six per cent. interest; neither has said def't set forth in his answer the number of the notes given, the amounts of each, the dates, and the times when each of the several notes mentioned in his said answer became ; or whether any security was given to secure the payment of the several sums of money mentioned in said notes in said bill and answer mentioned; or what part of said notes, alleged in his answer to have been paid, have been paid by him, either in full or in part; or to whom he, the said defendant, paid the same; or to whom the notes, alleged in defendant's answer to have been transferred and endorsed, were in fact transferred and endorsed by the said Isaac Fitzgerrel; or what parties now hold said notes, or any pat of the

28 same expecting to hold, the said defendant hath alleged in his said answer.

For that the said defendant hath not, in manner aforesaid, answered and set forth whether or not the said Fitzgerrel has, since the pretended sale of said lands was executed, as set forth in said complainant's bill, ever occupied and is now in possession of said lands, as in said bill alleged, nor set forth what portion of said premises, or during what time, or on what terms the said I. Fitzgerrel occupied the same as tenant or agent, as said def't has alleged in his said answer; or whether the said Fitzgerrel has had full control of the same, or has been either occupying or renting said lands with the buildings thereon to tenants, or has collected from the tenants occupying the same the rents for the use of the same; or whether the said Fitzgerrel has paid taxes on the same during said time, as alleged in said bill, or what amount of money said defendant gave the said Fitzgerrel to pay taxes on said premises, or for what years, as the said defendant has in his answer alleged; or whether the said Fitzgerrel ever paid any incumbrance on said premises, or any part of the same, after said conveyance was executed,

29 or has paid insurance on said premises or any part thereof, or has made improvements thereon the same as if he were the owner in fee, as in said bill of complaint alleged.

And the said defendant hath not, in manner aforesaid, answered and set forth whether or not the said Fitzgerrel has ever paid any rents for the use of said premises which the said Fitzgerrel is alleged to have used and occupied since said pretended conveyance; or what settlement the said defendant has made with the said Fitzgerrel for the use and occupation of said lands & lots, which settlement defendant alleges in his answer to have been a partial settlement for the same

That the said defendant hath not, in manner aforesaid, set forth whether or not the said Fitzgerrel has ever had any lease, contract, stipulation, or agreement for any definite rent; or whether there has ever been a full accounting between the said Fitzgerrel and said Buffington for said premises from the 30' day of Dec., 1867, to the first day of January, A. D. 1872.

That said defendant hath not, in manner aforesaid, answered and set forth whether or not the personal property described in complainant's bill was, after said pretended sale to said Buffington, used, sold,
30 and disposed of by the said Fitzgerrel for his own benefit, as alleged in said bill, or who was placed in possession of said goods from Jan'y 1, 1868, to April 18, 1868, as said defend't has alleged in his answer, or who disposed of the same, or what became of the proceeds of the same.

Neither has the defendant answered and set forth, in manner aforesaid, how he paid for said goods or horses, cows, mules, or what he paid for the same; or what direction, either verbal or written, the said Buffington gave to the said Fitzgerrel for selling the personal estate in said answer alleged by said defendant to have been given, or what accounting has been made between the said defendant & Isaac Fitzgerrel for the stock alleged to have been sold by said Fitzgerrel in said def't's answer.

For that the said defendant hath not, in manner aforesaid, answered and set forth whether or not the said Isaac Fitzgerrel did, after the delivery of said notes to him, either directly or indirectly, surrender the same to the said Buffington, his agent or attorney, by the hand of J. H. McCartney or any other person.

For that the said defendant hath not, in manner aforesaid, answered and set forth whether or not the notes in said bill mentioned have ever been paid by the said Buffington, or whether said notes in said
31 bill of complaint mentioned, or so many of the same as have become due, have ever been presented for payment.

For that the said defendant hath not, in manner aforesaid, answered and set forth whether or not the conveyance and pretended sale in said bill of complaint mentioned were in the usual and ordinary course of the business of said defendant and said Fitzgerrel.

That the said defendant hath not, in manner aforesaid, answered and set forth whether or not the property included in said pretended sale in said bill of complaint mentioned comprised all the real and personal estate of the said Fitzgerrel which was liable to creditors on execution. In all of which particulars the said complainants except to the answer of the said defendant as evasive, imperfect, and insufficient, and humbly prays that the said defendant may be compelled to put in a full and sufficient answer to said bill of complaint.

HARVEY & WOLCOTT,
Att'ys for Comp.

(Indorsed:) Filed June 27, 1872. J. A. Jones, cl'k.

32 And now, afterwards, to wit, on the seventh day of October, in the year aforesaid, the following further proceedings were had in said court in said entitled cause, and entered of record, to wit:

Rule on defendant to answer over.

CHARLES D. HARVEY, ASSIGNEE, &C., *vs.* TITUS BUFFINGTON. } In chancery.

On motion of complainant, by Mess'rs Harvey and Wolcott, his solicitors, the defendant is sued to answer over again by the first Monday of December next.

Afterwards, to wit, on the twenty-fifth day of November, of the year aforesaid, came the said defendant, by his said solicitors, and filed in the clerk's office of said court his amended answer to the bill of complaint herein, which said amended answer is in the words and figures following, to wit:

Amended answer.

This respondent, further answering under the rending of the court requiring him to answer over again, on motion of Mess'rs Harvey & Wolcott, complainants in the matter of Charles D. Harvey, assignee, &c., vs. Titus Buffington.

33 This respondent, answering further, says that the date of the notes referred to in said order are as follows—all of the following notes were dated as follows, and made payable as set forth in this answer, to wit, date of the notes given for the realty December 30, A. D. 1867, as follows:

One note for $350, due Jan. 1st, 1869, 6 p'r c't int.

"	"	$550,	"	"	"	"	"
"	"	$600,	"	"	"	"	"
"	"	$950,	"	"	1870,	"	"
"	"	$950,	"	"	"	"	"
"	"	$950,	"	"	1871,	"	"
"	"	$950,	"	"	"	"	"
"	"	$950,	"	"	1872,	"	"
"	"	$950,	"	"	1873,	"	"
		$950,	"	"	"	"	"
		$480,	"	"	1874,	"	"

This respondent, further answering, says that the above invoice of notes is a true copy of dates and amounts and when due, and this defendant further says that this said list of notes includes all the notes that this respondent gave to Isaac Fitzgerrel for the lands and livestock purchased of him in the month of December, A. D. 1867, or at any time during the transaction of purchase and sale during that year.

This affiant, further answering, says that all of said notes bore interest at the rate of six per cent. per annum.

34 This defendant, further answering, says that he was not required to give any security on said notes, from the fact that the said note' w*as* so drawn that they were a lien upon the land, it being recited in each note on what particular land said note*s* was given for.

This affiant, further answering, says that all of said notes were all made payable to the said Fitzgerrel, and transferred by him to different parties, to wit: one of said notes was transferred to Thomas Cooper and one to George Scoot; the balance of said notes was transferred to one Lindsey and to Farris, of the State of Kentucky.

And he, further answering, says that he has learned who holds said notes since making his former answer.

And this defendant, further answering, says for anything he now knows the said parties named still hold said notes, except some of said notes which he has lifted since answering previously.

This respondent, further answering, says that the first year after purchasing from the said Fitzgerrel *that* he rented to him a dwelling-house on lot number 19, in the town of Fairfield; also, lot No. 17, in said town; also, 41¾ acres of land adjoining town, for which he paid me customary rent, the amount not now remembered.

35 And this defendant, further answering, says that after the first year *that* he rented the farm in the county to the said Isaac Fitzgerrel, and received in payment for rents the customary share of the crop; and he further says that the said Fitzgerald sub-let a portion of said land to tenants, and collected the rents as my agent or tenant.

This affiant, further answering, says that the said Fitzgerrel has acted as my agent and paid the taxes ever since I purchased said property up to last year, the taxes of last year not being paid up to date.

Further answering, says that the said Fitzgerrel has paid, out of rents, &c., about six hundred dollars and upwards on incumbrance that was on the property at the time of the purchase, according to my direction.

This affiant, further answering, says that the said Fitzgerrel has paid nothing in the way of insurance on the property, as he never had the said property insured; but that he has made, under his direction, the following improvements on the farm in the county: the said Fitzgerrel cleared about eight acres of land and made 3,000 new rails, built a corn-crib and kitchen, and put some improvements on the house in town on lot No. 19, amounting to over one hundred dollars.

36 And, further answering, says that the understanding between himself that Fitzgerrel was to pay him a reasonable rent for the property that occupied and to look after the other property as his agent, and to collect and pay out the rent, &c., as directed, and that he has made settlement with me from time to time for the same.

This respondent, further answering, says that he does not now remember the exact am't paid for the personal property, including the live-stock, but thinks it amounted to about three thousand dollars.

Further answering, says that in payment he gave his notes, some of which notes he has paid and some of them remain unpaid. The said notes were given to Fitzgerrel in the same manner that the notes were given in the realty.

This affiant, further answering, says that Fitzgerrel did not have control of the property, except by his instruction.

And, further answering, says that at the time I made the said purchase of the said Fitzgerrel he had both real & personal property that I did not purchase of him.

TITUS BUFFINGTON.

37 STATE OF ILLINOIS, *Clay Co.:*

Sworn to and subscribed before me this 22d day of November, A. D. 1872.

[SEAL.] R. D. S. FILSON,
Notary Public in and for said County.

(Indorsed:) Filed November 25, 1872. J. A. Jones, clerk.

Afterwards, to wit, on the second day of December, of the year afore

said, came the said complainant, by his solicitors, and filed in the clerk's office of said court his exceptions to the amended answer herein; which said exceptions are in the words and figures following, to wit:

Exceptions to amended answer.

Circuit court United States, southern district of Illinois, in the seventh judicial circuit.

CHARLES D. HARVEY, ASSIGNEE OF ISAAC Fitzgerrel, bankrupt,
vs.
TITUS BUFFINGTON.

Exceptions taken by said complainant to the insufficient amended
38 answer of the said defendant to the said complainant's bill of complaint.

For that the said defendant hath not, to the best of his knowledge, remembrance, information, and belief, answered and set forth the date the amounts, and the times when each of the notes alleged by def'ts to have been given for the stock of goods in said bill described were payable.

Nor has said defendant, to the best of his knowledge, remembrance, information, and belief, answered and set forth what the payments are which he alleges in his former answer he has made, nor the notes upon which said payments were made, nor the person to whom he alleges he has made such payment.

Nor has said defendant, to the best of his knowledge, information, & belief, answered and set forth the terms on which said Fitzgerrel had possession of the real estate in said bill described, nor what rent said Fitzgerrel has paid him, nor the particulars of the accounting which he alleges he has made with said Fitzgerrel.

Nor has said def't, to the best of his knowledge, remembrance, information, and belief, answered and set forth the price he paid
39 for said stock of goods, nor how he paid for the same, nor to whom he paid for the same.

In all of which particulars the said complainant excepts to the answer of the said defendant as evasive, imperfect, and insufficient, and humbly prays that the said defendant may be compelled to put in a full and sufficient answer instanter to said bill of complaint.

HARVEY & WOLCOTT,
Att'y for Compl't.

(Indorsed:) Filed December 2, 1872. J. A. Jones, cl'k.

And afterwards, to wit, on the eleventh day of December, of the year aforesaid, came again said defendant, by his said solicitors, and filed in the clerk's office of said court his answer to the bill of complaint herein; which said answer is in the words and figures following, to wit:

2nd amended answer to bill of complaint.

UNITED STATES OF AMERICA:

Circuit court of the United States of America, for and within the southern district of Illinois. In the circuit court.

And now comes the said Titus Buffington, the defendant, to a bill of

complaint exhibited against in the said court, by Charles D.
40 Harvey, assignee of Isaac Fitzgerrel, for answer to the said bill of complaint, or so much thereof as he advised it is material or necessary for him to answer, saving to himself any and all manner of benefits or exceptions, or otherwise, that can, may, or may be taken or had to the many uncertainties and imperfections in said bill contained, for answer, answering, says that he is informed and *and* believes the said plaintiff hath been appointed assignee of Isaac Fitzgerrel, as in said bill stated.

Further answering, says that on the 31st day of December, A. D. 1867, the said Fitzgerrel was the owner in fee-simple of the lots & land set up in the petition, and he believes the same are therein properly described.

Further answering, says that true it is he did purchase from the said Fitzgerrel the land and lots as mentioned in the said on the the 31st day of December, A. D. 1867; that said purchase was made in good faith and with no intention to hinder, delay, or other put the creditors of the said Fitzgerrel to any trouble; that, so far as this respondent is informed, the said Fitzgerrel did not have any creditors, and was, so far as this respondent is informed, in good standing and entirely out of debt; that if he owed any sum or sums of money to any person or persons this respondent was not informed of that fact, and had
41 no reason to suspect the fact to exist; that he was then in good standing and good credit, and was supposed to be perfectly solvent, and, in fact, not in debt to any person or persons so far as this respondent was informed and believes.

This respondent did agree to give for the said estate its full value, to wit, the sum of seven thousand nine hundred and fifty dollars; that he paid down the sum of fifty dollars; that on the said day of purchase he executed his several promissory notes for the balance due on the said land, and that said notes were payable to said Fitzgerrel or his order, and are described as follows, to wit, all dated Dec. 30, 1867, one for 350, one for 550, one for 600, all due Jan'y 1st, 1869, and drawing six per cent. from date; one for nine hundred and fifty, one for nine hundred and fifty, due Ja'y 1, 1870, at six per cent. interest; one for nine hundred and fifty, and one for nine and fifty dollars, due on Ja'y 1, 1871; and one for nine hundred and fifty, due in 1872; one for nine hundred and fifty dollars, and one for nine hundred and fifty dollars, each due Jan'y 1, 1873; and one for four hundred and eighty dollars, due Jan'y 1, 1874, all payable to said Fitzgerrel, or order, and delivered to him and bearing six per cent. interest from date until paid.

42 This respondent, further answering, says that was included in the said notes, above described, the sum of six hundred and thirty dollars, which said last was agreed to be paid for the live-stock purchased by this respondent from the said Fitzgerrel at the same time he purchased the said real estate and stock was on the said land, and included three or four head of young cattle, two young mules, three horses; that the amo'nt of six hundred was a fair and valuable consideration for said stock, and all it was worth at that time; that said notes, above described, was given in full satisfaction for the land purchased by this respondent from the said Fitzgerrel, and, also, for the stock purchased from him; that said purchases of land and stock were both made on the 30th day of December, A. D. 1867; that he gave no other notes nor agreed to pay any other sum or sums for said land or live-stock, and owes nothing for the same only what is still due on the said notes so given by him as aforesaid and described herein.

Respondent, further answering, says that the note for three hundred and fifty dollars, due Jan'y 1, 1869, was paid by this respondent in full, and the amount was rec'd by one W. Pharris, to whom the said
43 note had been transferred by the said Fitzgerrel before the same was due; that said payments were made at different times, the full amount being paid in July, 1872; that said note for five hundred and fifty dollars, due Jan'y 1, 1869, has been paid in full by this respondent to the said W'm Pharris, and that payment was made in several payments, the full amount being paid in full in July, 1872; that said note had been transferred by endorsement to the said Pharris, from whom he received the said note, and that said note was endorsed before it was due, and delivered to said Pharris by said Fitzgerrel; that said note for six hundred dollars, due the 1' Jan'y, 1869, was transferred by said Fitzgerrel to George Scott, and that Scott brought suit on the same against this affiant in the circuit court of Wayne County, Illinois, and obtained judgement on the said note for the amount due on the same, and this affiant paid the said judgment in full in the winter of 1871, and the same is receipted on the said docket of said court; that the notes due in Jan'y, 1870, for nine hundred and fifty dollars each, are both paid in full; that said notes are now in the possession of this respondent;
44 that said notes were endorsed to the said Pharris before they became due, and this respondent paid to said Pharris, through his agent, the full amount due on the same, and that said payments were made at different times, the last being paid in July, 1872, and the notes then delivered up to this respondent.

Respondent further says that the above are all of the notes given by this respondent for the purposes aforesaid, upon which payments have been made in full; that the balance of said notes are now unpaid, and some of them due, and still unpaid.

Respondent, further answering, says that, so far as he is now informed and knows, the said notes are all transferred by endorsement by the said Fitzgerrel, and are now at this time held, so far as this respondent is informed, by the persons follows, to wit: Thomas Cooper, W'm Pharris, and one M'r Lindsey; that said parties hold the balance of the said original notes, so far as this affiant is informed and believes; that this respondent paid all of the said amount so paid by him on said notes in good faith, and under this belief that he was the lawful and rightful purchaser of the said land and stock so purchased by him.

45 That this respondent, further answering, says that he was not required to give any security on said notes given for the purchase of said lands, from the fact that the said notes was so drawn that they were a lien upon the lands sold, it being recited in each note on that particular land said notes was given for.

Respondent, further answering, says that true it is he did, on the 31st day of December, in the year A. D. 1867, purchase from the said Fitzgerrel his stock of goods merchandise, consisting of such goods as are generally kept in a country store; that he agreed to pay for the said stock of goods about the sum of twenty-five hundred dollars, and took an invoice of the same, which said invoice was taken from this respondent by the said Harvey, as assignee of said Fitzgerrel, and this respondent, therefore, cannot give a full and complete description of the said goods & merchandise on that account; that he took said inventory and valued the goods at what they were worth at that time, and gave his note for the amount due, as follows, that is to say, one note for five hundred and forty dollars, due on the 1' day of Jan'y, 1873, drawing six per cent. interest from date, and payable to said Fitzgerrel

or order; two notes for nine hundred and eighty dollars each,
46 dated Dec. 31st, 1867, and payable to said Fitzgerrel or order, and due May 1, 1874.

Respondent, further answering, says that he does not know at this time, nor has he ever known, who has or owns the said three notes last aforesaid; that they never have been presented to him for payment, nor has any person ever notified him that they owned said notes.

Respondent, further answering, says that immediately on purchasing the said goods he entered into the possession of the said stock of goods and store-house, employed a clerk, and carried on the retail business of selling said goods, the same as any other country merchant; that he so sold the said goods until the 18th day of April, 1868, when he was enjoined from selling the said stock of goods by the order of this honorable court upon the application of Henry Bell & Sons, who filed their petition in bankruptcy in the said the southern district of Illinois, asking that said Fitzgerrel should be declared a bankrupt under the laws of the United States, and asking that your honor would enjoin this respondent from the sale of the goods so purchased from the said Fitzgerrel, including the real estate as well as personal property so as aforesaid purchased.

47 Respondent, further answering, says that such proceedings was had on the petition for injunction at the June term of the said district court aforesaid, held in the year 1868; that said injunction was dissolved and the goods ordered returned into the custody of this respondent. Respondent then made up his mind that he would not go into the business of selling merchandise, and sold out the stock of goods so purchased after the dissolution of said injunction, as he lawfully might do under the said order dissolving said injunction.

Respondent submits that this caus' was fully heard upon evidence thereto at June term aforesaid, and disposed of by the order of this honorable court, but that no appeal has ever been taken from the said order or decree, and it now remains in full force and effect, and is a bar from any further proceeding in this cause.

Respondent, further answering, says that for year A. D. 1868, he rented the said land, or 41½ acre' of the same, to said Fitzgerrel, and was to and did receive one-third of the crop raised on the said 41 acres, amounting in value to about the sum of forty dollars, as near as he can recollect; that he also rented lots No. 19 and 17, in the town of Fairfield, to said Fitzgerrel, for which he agreed to pay this respond-
48 ent about the sum of ten dollars per month, about what the same was worth, a good fair rent for the same; that renting was for the year 1868.

Further answering, that for the A. D. 1869, he also rented the farm in the country to said Isaac Fitzgerrel, and received in payment for the rent one-half of the crop raised on the said land, which said one-third was worth in cash about the sum of .

Further answering, says that for the year' A. D. 1870, 1871, 1872, he rented to said Fitzgerrel and others the lands, and rec'd for the same one-third of the crop for each of the said years; that said one-third was worth in actual cash about the sum of one hundred & fifty dollars for each of the said years as near as this respondent can now answer; that the said lots 17 & 19 he rented for the said year last aforesaid for the sum of , and has actually received about .

Respondent, further answering, says that he paid taxes for the land for the year' 1868, 1869, 1870, and that said taxes was paid either by himself or his agent, and amounted, as near as this respondent can now

answer, not having the receipts before him, to about the sum of eighty dollars per year, making in all about two hundred and forty dol-
49 lars taxes paid *paid* by this respondent on the land and lots.

Respondent, further answering, says that at the time he purchased said land there was a mortgage due on the same, and a lien on the land given the said Fitzgerrel to Charles Woods, and not paid; that on the said mortgage there was due about the sum of one thousand dollars, which was a lien on the said land, six hundred of which was paid with the money of this respondent and by his direction and under his authority; that said sum was justly and honestly due and had been for some time, and had to be paid in order that this respondent might remove the said lien on the said land.

Respondent, further answering, says that he paid out nothing for insurance on the said lots or land, or the building on the same; that he deemed it better or just as well to take his own risk in the matter, as insurance was a matter in which he had no confidence, or at least a very little confidence, and for that reason he did not insure; that said Fitzgerrel had no insurable interest, and this respondent does not know whether he made any insurance; if he did he done so with-
50 out the authority or knowledge of this respondent.

Respondent, further answering, says that he has not sold or incumbered any of the real estate so purchased by this respondent, excepting about ¾ of an acre, which was sold for fifty , and that he now owns and holds the same, and is receiving rents for the same, as he lawfully has a good right to do; that the rents he has rec'd from the said Fitzgerrel was the same that any other person could have rented the land for, and such price as was generally considered a good rent in the neighborhood where the land was situated; that said Fitzgerrel accounted to this respondent and made his settlement for rents, and either sold the share of this respondent's crop for cash, or delivered to this respondent his share of the rent in kind as this respondent directed him to do; that the amount rec'd was about as above stated, and that it was but little over what would annually pay the taxes due on the said land, and not, in fact, sufficient to pay for taxes and improvements such as ought to have been made on the said land.

Respondent, further answering, says that *that* said Fitzgerrel never had any control over the personal property after the sale to this re-
51 spondent; that he took immediate possession of the same, and it was under his own absolute control, and all the control said Fitzgerrel had over the same was as the agent and under the direction of this respondent; that if the said Fitzgerrel ever pretended to exercise any other or further control than as above specified, he did of his own way, and not with the consent of his affiant; that he never had any control of the real estate only as the agent or tenant of this respondent, and never pretended to have any interest in or to the same, so far as this respondent is informed and believes.

Respondent further states that said Fitzgerrel rented some of the lands for the benefit of this respondent and as his agent, and that rec'd from said parties to whom he rented about the sum of , all of which he accounted for to this respondent and claim or claims or pretends any of the rent rec'd by him and paid it to this respondent or under his authority; that the allegation in the petition showing or charging a different state of facts are not true in any respect whatever.

52 Respondent further says that he has caused the land to be improved in a suitable manner, and that the value of the said improvement caused to be made was worth the sum two hundred dollars,

and consisted in clearing, fencing, and building, and repairs that then was necessary and important on said place. That he caused building on lot 19 to be repaired by putting a new roof on the same, worth about one hundred dollars, and some other small repair and improvements on said lot.

Respondent, further answering, says that at the time this respondent purchased said property from said Fitzgerrel, he other property, both personal and real, to wit, about 80 acres of land, worth about one thousand dollars. He also had personal , but what amount this respondent cannot tell; that the personal was scheduled and came into the hands of his assignee, as this respondent is informed and believes.

Respondent, further answering, says that said contract and purchase made by this respondent, of both the personal and real estate, was in good faith, for which he paid a full and good consideration; that he did not know, and had no reason to know, that said Fitzgerrel was insolvent, or in any manner indebted to any person or persons in any
52 sum or sums whatever; that all the allegations of the said bill charging this respondent with notice in this matter are false and not true.

This respondent explicitly denies that he, at any time, combined, confederated, or agreed to or with the said Isaac Fitzgerrel to hinder or delay his creditors, or in any manner attempted to defraud the creditors of the said Fitzgerrel.

And having fully answered all the material allegations in the said bill, &c., prays to be hence dismissed.

J. E. ROSETTE & BRO., *Att'y.*
TITUS BUFFINGTON.

Subscribed and sworn to before me this 9th day of December, A. D. 1872.

M. B. CONVERSE,
U. S. Commissioner.

(Indorsed:) Filed December 11th, A. D. 1872. J. A. Jones, clerk.

And now, afterwards, to wit, on said eleventh day of December, of the year aforesaid, came again the said complainants, by the'r said solicitors, and filed in the clerk's office of said court his replica-
54 tion to the second amended answer of the defendant; which said replication is in the words and figures following, to wit:

Replication to 2nd amended answer.

Circuit court United States, southern district of Illinois.

CHARLES D. HARVEY, ASSIGNEE OF ISAAC Fitzgerrel, bankrupt,
vs.
TITUS BUFFINGTON.

The replication of C. D. Harvey, assignee of Isaac Fitzgerrel, bankrupt, to the answer of Titus Buffington, defendant.

This repliant, saving and reserving unto himself, now and at all times hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said

answer, for replication thereto, says, that he will aver, maintain, and prove his said bill of complaint to be true, certain, and sufficient in law to be answered unto, and that the said answer of said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant.

Without this, that any other matter or thing whatsoever in said
55 answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true.

All which matters and things this repliant *are* and will be ready to aver, maintain, and prove as this honorable court shall direct; and humbly pray as in and by their said bill they have already prayed.

HARVEY & WOLCOTT,
Complainants' Solicitors.

(Indorsed:) Filed December 11th, A. D. 1872. J. A. Jones, clerk.

And now, afterwards, to wit, on said eleventh day of December, in the year last aforesaid, the following further proceedings were had in said court in said-entitled cause, and entered of record, to wit:

Order of reference.

CHARLES D. HARVEY, ASSIGNEE, &C.,
vs.
TITUS BUFFINGTON. } In chancery.

This day come the parties, by their solicitors, and by consent this cause is referred to the master in chancery to take proofs herein.

56 Afterwards, on the second day of January, in the year of our Lord one thousand eight hundred and seventy-three, came the parties, by their solicitors, and filed in the clerk's office of said court their agreement; which said agreement is in the words and figures following, to wit:

In the case of Harvy vs. Buffington, I have no objection to a rule being made against us that the testimony may or must be closed in 20 days from this date.

J. E. ROSETTE & BRO.
HARVEY & WOLCOTT.

(Indorsed:) Filed January 2, 1873. J. A. Jones, cl'k.

And now, afterwards, to wit, on said second day of January, of the year last aforesaid, the following further proceedings were had in said court in said-entitled cause, and entered of record, to wit:

Order to close testimony.

C. D. HARVEY, ASSIGNEE OF ISAAC Fitzgerrel,
vs.
TITUS BUFFINGTON. } In chancery.

57 This day come the parties, by their solicitors, and, by agreement on file, it is ordered that the testimony in this case be closed in twenty days from this date.

Deposition of Leander Linsley.

Deposition of Leander Linsley, taken at Springfield, in said district, on the 25th day of December, A. D. 1872, by M. B. Converse, a commissioner of said circuit court of the United States, on behalf of the complainant.

LEANDER LINSLEY, being by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, deposes and says:

I reside two miles north of Fairfield; am a farmer. I own a farm of one hundred and ten acres. I have been a farmer two years. Prior to going to farming I was a shoemaker. About three years ago M'r McCartney came and gave me some money to buy some notes from Isaac Fitzgerrel. He gave me money twice to buy notes with. The notes were signed by Titus Buffington. I think I bought over one thousand dollars' worth of notes in all.

Question. What instructions did M'r McCartney give you at the time he gave you the money, and what did he say about the money and about the notes?

58 (Question objected to by M'r McCartney, counsel for the bankrupt.)

Answer of Linsley. He told me to take the money and buy the notes from Fitzgerrel which he had against Buffington, and also told me how much to pay for the notes. I gave the notes to M'r McCartney within a few minutes after I purchased them. I do not know what became of the notes after I gave them to McCartney. I have never heard from them since. I never had any interest in the notes. I know the two-hundred-acre farm on which Fitzgerrel lives.

Question. Do you, or do you not, recollect that it was upwards of two or three thousand dollars' worth of notes you bought?

Answer. I do not. M'r Buffington knew nothing about my purchasing the notes, so far as I know. I am a brother-in-law of M'r McCartney's.

LEANDER LINSEY.

Subscribed and sworn to before me this 25th day of December, A. D. 1872.

M. B. CONVERSE,
U. S. Commissioner.

59 (Indorsed:) Filed Jan'y 22d, 1873. J. A. Jones, cl'k.

Deposition of James McCartney.

Deposition of James McCartney, taken at Springfield, in said district, on the 27th day of December, A. D. 1872, by M. B. Converse, a commissioner of said circuit court of the United States, on behalf of the complainant.

JAMES MCCARTNEY, being by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, deposes and says:

My residence is Fairfield, Wayne County, Illinois; occupation, practici'g attorn'y at law. I was employed by M'r Buffington and M'r Fitzgerrel in making out the papers, deeds, bills of sale, notes, &c., in Decem-

ber, 1867. It is my impression that there was a description of the land in the notes given therefor. I have forgotten. I think I have seen the notes since the transfer was made, but I cannot remember when, or in whose hands they were. I have no recollection that I had those notes in my hands after that time, delivered to me by M'r Linsley; but I cannot tell positively now.

60 Question. Did you purchase for yourself, or any other person, any of the notes given by Buffington to Fitzgerrel? If so, state of whom you purchased, for whom you purchased the same, the amount of the notes, and the amount paid for said notes.

Answer. My recollection is that I did purchase a portion of the notes. I do not remember how many, nor what was paid for them, but I think that I bought upwards of two thousand dollars; perhaps more; I think between two and three thousand. My recollection is that I bought them for a M'r Ferris, who I think resides in Kentucky. My recollection is that I told him, Linsley, to pay about seventy-five per cent. for them. I bought them of M'r Fitzgerrel through M'r Linsley; that was my understanding. I furnished M'r Linsley with the money to purchase the notes. I do not know where the notes now are, or to whom they were delivered. I delivered them to some one, but I don't know to whom; I have not got them in my possession now. I do not remember who it was that furnished me with the money that I gave to Linsley to purchase the notes with. It was not Ferris, I am satisfied. My recollection is that the party who furnished me with the money stated that

61 the purchase was to be made for Ferris; I don't remember; I just have that impression. To the best of my knowledge and belief, it was not M'r Titus Buffington who furnished me the money, either directly or indirectly; and to the best of my recollection it was not M'r Fitzgerrel, and I want it distinctly understood that I don't pretend to say who it was. I will not swear positively that it was not Titus Buffington or M'r Fitzgerrel, because I do not remember who it was. In my deposition taken in January, A. D. 1872, in answer to the question, "Was it Titus Buffington to whom you delivered the notes?" I answered, "If so, I did it as confidential attorney for him, and refuse to answer on that ground." I had no correspondence with M'r Ferris, either before or since the purchase of the notes, in relation thereto.

Question. How do you know you purchased these notes for Ferris?

Answer. I do not know it. I got the impression that the notes were to be bought for M'r Ferris from the man who furnished me the money, but I do not remember who the man was that furnished the

62 money. I had only been in Wayne County about two years at that time, and had very few acquaintances; and the person who furnished me with the money to buy the notes was probably a stranger; I do not remember that it was a stranger. I am pretty positive that I have not seen any of those notes since that time, but I have heard from them only from Buffington, Fitzgerrel, and Scott. I am not acquainted with M'r Ferris, and never saw him. I only heard that he lived in Kentucky. I know what the customary rents are in Wayne County; I think I do. The customary rent is one-third of the crop, the cash equivalent of which is from one dollar to one dollar and a half per acre, and when the land is situated close to a depot, it sometimes would rent for two dollars per acre for the land actually in cultivation. In my deposition January, 1872, to the question, "Was you attorney or agent of Buffington in the purchase of those notes?" I answered, "If so it was as confidential attorney, and I refuse to answer." My reasons for giving this answer was that I thought the question improper; not that I refused to

say that I was his attorney. I will swear that I was not Buf-
63 fington's attorney for the purchase of those notes, but was his attorney in all his legal business at that time, I think.

Question. How do you know that you were not his attorney in the purchase of those notes?

Answer. All I can say is, if I was I do not know it, and did not at the time. I cannot now swear positively whose attorney I was in the purchase of those notes, any further than I have stated.

JAMES McCARTNEY.

Subscribed and sworn to before me this 27th day of December, A. D. 1872.

M. B. CONVERSE,
U. S. Commissioner.

(Indorsed:) Filed Jan'y 22nd, A. D. 1873. J. A. Jones, cl'k.

Deposition of Isaac Fitzgerrel.

Deposition of Isaac Fitzgerrel, taken at Springfield, in said district, on the 28th day of December, A. D. 1872, by M. B. Converse,
64 a commissioner of said circuit court of the United States, on behalf of the complainant.

ISAAC FITZGERREL, being by me first duly sworn and cautioned to testify the truth, the whole truth, and nothing but the truth, deposes and says:

I am the man that was adjudged a bankrupt about four years ago by the district court of the United States for the southern district of Illinois. The two deeds bearing date December 30, 1867, contain a description of all the real estate which I owned at that time, except an interest that I had in a sixty-acre tract mortgaged to M. E. Reeves & Co., for about its full value. At the same time I sold the land I sold a stock of goods and a horse or two and some cattle. All the land and personal property was sold to Titus Buffington. At the time I sold the land to Buffington there was a mortgage on the two-hundred-acre farm to Charles Wood, for one thousand dollars. I have paid a part of the Wood mortgage, but don't recollect what amount. Part of it was paid before I was adjudged a bankrupt and part afterwards. I sold the property to Buffington and took notes for it, but do not remember the amount of the
65 notes. I cannot give the value of the different tracts of land, nor the aggregate value. The goods were invoiced, and they were worth between twenty and twenty-five hundred dollars. There was a valuation put upon the other personal property, but I do not know what the valuation was, or hardly what the property was. I received a considerable amount from the goods sold, and gave Buffington credit for what I received, and paid my home debts out of it. James Stanley was employed by Buffington, and sold goods about one month. I had permission from Buffington to sell these goods to men whom I was owing, and apply them in payment of my debt. James Stanley kept the books. The amount of goods I received was credited on Buffington's notes. I assigned one of the notes to George Scott for five or six hundred dollars, and one note to Thomas L. Cooper for about five or six hundred dollars, and it was understood between Buffington and myself when these notes were made that they were to go to pay these two debts. There was no money received upon them, but simply made to pay these two debts. I assigned some of the notes to Leander Lindsley.

Do not recollect the amount, but it was over one thousand, and
66 may have been over three thousand dollars. I sold the notes at a discount of 33 per cent., and got the money from them. The remainder of the notes I sold to Henry Ferris, of Kentucky. I went to Kentucky to execute said sale. I think said sale was made before the filing of the petition in bankruptcy against me. The value of the notes sold to Ferris was upward of three thousand dollars. The notes I sold Lindsley were assigned before my bankruptcy. I do not recollect what amount Buffington paid me. The money I received from the sale of the notes I have applied in various ways—in paying debts, buying stock for the farm I lived on, and in supporting my family. I have paid no large debts, nothing but home creditors. I have had the possession and control of the real estate most all the time since the transfer to Buffington, either as renter or agent for Buffington. I have used the two-hundred-acre farm two years myself, and a part of it for three years. I had no written contract for the rent of farm, but I was to go on it and improve it as if it was my own, and Buffington was to do what was right about it. There was no time set as to how long
67 I was to have it; but in case Buffington sold it, I was to give it up. I have paid rents on the property to Buffington only by way of taxes, except one field, which I took a note to Buffington for $50, and gave him the note. I may have paid him something more, but to no large amount. I took no security from Buffington on the notes which I got of him, except as stated in the notes. I considered Buffington good enough without security. I had no means left of paying my creditors after making the sale to him. I have known him for about twenty years, and done considerable business with him in that time. I don't know that I gave Buffington any reason for my wishing to make the sale. I do not recollect whether I told him I was owing anything or not. I was pushed by C. A. Beecher to pay some of my debts at the time I made the sale. I made the sale because I wanted to make it, and I had a reason for it. I refuse to give any other reason than that my creditors were pressing it. There was no understanding between Buffington and myself that in case he sold the property which I let him have for more than he gave me that I was to have the benefit of the overplus. I do not recollect whether I or M'r Buffington was
68 to assume the payment of the mortgage to Charles Wood. Buffington has never received anything from the sale of the Buffington notes, either directly or indirectly, to my knowledge.

Cross-examined:

I considered Buffington perfectly good for the amounts of the notes which I took of him at the time I made the sale, including what I was letting him have. Buffington has paid me a considerable amount on the notes since the sale. I also know of his paying George Scott something on the note assigned to him. I have never had any final settlement with Buffington in regard to the rents, but I expect to settle with him and pay him the rents after deducting the improvements that I have made. Buffington had a good farm of about one hundred acres, and had it well stocked. He had a good stock of horses; don't know the number. He had a good stock of sheep, but I do not know the number. He also had cattle, but I don't know the number. I intend to make a final settlement with Buffington when convenient. He has never called on me
69 for a settlement for the rents and improvements. Some of the payments made by Buffington to me were made before and some after I was adjudged a bankrupt. They were all endorsed on the notes,

but don't know whether they were endorsed as paid in or all at one time.

Re-examined:

I do not know where the money came from that I got of Lindsley for the notes. I never spoke to Linsley about his buying the notes until he spoke to me. I signed the notes in blank and gave them to Linsley. I never employed McCartney to negotiate a sale of the notes to Linsley. I employed McCartney as a general attorney to attend to and transact my business, but don't think I employed him to buy the notes. McCartney never got any of the money from those notes. I don't know whom he got it from. Buffington never got any of the money from me. None of the money ever, directly or indirectly, went into the hands of Buffington or McCartney, to my knowledge. I negotiated the sale of the notes to the man in Kentucky myself. I don't know where Ferris got the money to buy the notes. He is a farmer and lives near Glasgow.

70 Question. How much did you pay for repairing the house in town?

Answer. About sixty dollars.

Question. How much rent did you get for the house in town?

Answer. The first year I got fifteen dollars per month; the second year I rented it part of the time to Howe for eighteen dollars per month—he rented it for six months, but did not stay the time out—and part of the time to Covington at nine dollars per month. I rented the store-house part of the time at six and part of the time at seven dollars per month. It has not been rented all the time. I have received the rents myself all the time, so far as they have been paid.

Question. How did you come to go to Linsley to sell these notes?

Answer. I never went to him at all; he came to me. I can't state which notes I sold to Linsley. My impression is that they were along the first due. Some of them were, and some of them were a little later. I am confident of it. I have seen the list of the notes mentioned in Buf-

71 fington's answer. I cannot tell from that list which notes were assigned to Linsley or Ferris, or which were assigned to Cooper or Scott. The notes were assigned to Linsley in the spring after they were given, and I think likely in March. The notes were assigned to Ferris the same spring, but I think later; I think in April. It was before I was ordered to show cause why I should not be declared a bankrupt. The notes were assigned to Scott directly after they were given. They were made for that purpose. I don't think that I have seen any of these notes since I assigned them. I had no correspondence with M'r Ferris before I went to Kentucky to see him. I can't tell when I saw him last before that time. It had been several years. I went to Kentucky with the express purpose to try and sell the notes to some person, as I supposed there was money in that part of the country. I had no particular person in view in Kentucky to whom I could sell the notes. I had a brother-in-law there who was pretty well off before the war. I supposed I might maybe sell to him, but did not know. I went to M'r Ferris because he was a relative of mine, and I went to see him. I had not had any letter from M'r Ferris since the war. There had been no correspond-

72 ence between us. I think M'r Ferris lives some five or six miles from town. I am not positive; I don't know. I knew that he had a tract of land. Don't know how large a tract. I don't know that I saw any stock on the farm except two teams, with which they were ploughing. I knew nothing about his financial condition, only that he

was in easy circumstances. I made the sale to Ferris the second day after my arrival there. The sale was made at Ferris' house. I delivered the notes to him the evening after the sale was made. He gave me the money, but I can't tell the amount.

Question. Can you tell within one thousand dollars of what you got for the notes?

Answer. I can't tell anything about it; I don't recollect. I cannot tell what I got for the notes, and I am not going to guess at it. M'r Buffington had paid me something on the notes before I sold them, but I can't tell how much. The reason that payments were made on these notes by Buffington before they became due was that I got in a tight place for money, and I wanted some money, and of course he let me have some, and also the rents that were due him on the town property that I lived in, and on the farm. I also got some goods of Stan-
73 ley, which were put in and all credited on the notes. I cannot say how much was credited on the notes, as it was a mixed-up affair. I think I credited on these notes all that Buffington paid me up to the date that I sold them. Ferris paid me the balance due on these notes after making the discount agreed upon. If there was a deal between me and Buffington by which I credited him with fifteen hundred dollars, it was the item credited upon the notes I sold Ferris. I guess it was. I don't dispute that I said in my deposition of May 22, 1871, that there was a deal between me and Buffington, by which I credited him with fifteen hundred dollars on the notes, but I do not recollect the amount now. Before the sale of the notes to Ferris, I met him at a little town on the railroad near where Ferris lived; I don't recollect the name of the town. I think it was about three miles from where Ferris resides. I happened to meet with him there the next day after we had made the contract. I do not know whether there was any bank at that town or not. I did not look for any. I had not entirely made the contract with Ferris before I met him at the depot. He had not fully agreed to take them before that time. I went to his house that evening, and consummated the bargain with him, and received the money from
74 him. He paid me in the common currency of the United States. I brought the money home with me. I can't say whether Ferris had the money in the house or not. I did not assist him, either directly or indirectly, in finding the money to purchase the notes with. I think that all the notes received from Buffington were sold to either Linsley, Ferris, Scott, or Cooper—that is, some to each. I took nothing with me to show whether the notes were good, or whether Buffington was good. There was something said about it, but I don't remember what. I am satisfied that I told Ferris that Buffington was good. I don't recollect what I did say about Buffington being good. M'r Ferris has not written to me relative to the notes since I sold them to him. I don't think that I recommended any man to him to act as his agent in Illinois. I consider that two hundred and seventy-two dollars is a reasonable rent for lot No. nineteen and the 41¾ acres for the year 1868. I think that this two hundred and seventy-two dollars was credited on the notes that were sold to Ferris. I do not know who was on the farm when I sold it to Buffington; my son might have been. I carried on the farm the year before I sold it, but I don't know just who was on the farm. Rusher was working on the farm for some share of the crop. I
75 can't tell whether my son John had any control of the farm or not. He might have been superintending it through my instructions. The first year after I sold the farm to Buffington I had no control of the farm, except to look after it. I don't think I rented the

farm for Buffington that year. I cannot now tell who was on the farm that year. I have not charged my mind with these things. I might have been superintending the farm the first year under his instructions. I think it is very likely that I did superintend it. I cannot tell whether I collected any rents for M'r Buffington the first year or not. I don't think that I ever rented the farm for anything but grain-rent. M'r Buffington run the farm one year, though I looked over it then. I suppose I carried on the farm for the years 1870 and 1871, and what I paid him therefor I paid in improving the property. I made no division of the grain that year to see what the rent would amount to. Buffington and I have never settled that up, either as to the amount I should pay or as to the value of the improvements made by me. I acted as his agent or friend in looking after the farm from the time he purchased it to the present time. I was authorized to rent the farm if I could. I don't know that I was authorized to use the rents and proceeds of the farm in improving it.
76 When it was rented to other parties, I will not swear that I was not authorized. I can't recollect how much money I have paid on the Wood mortgage. What I paid on the mortgage was derived principally from rents on the town property. I paid the three hundred dollars to Shafer during the two years that I was on the farm. I paid Wood something the year before I went on the farm, in 1869, I suppose. I paid part of that mortgage before I went into bankruptcy; don't know how much. I think I collected some rents for the farm the first year after I sold it; if that was the year the beans were raised, I did. I don't know when the cattle were sold. I don't know whether I sold them or not. I don't recollect anything about the stock transaction, with the exception of the mules. The signature to the bill of sale now shown me, and which is marked "Exhibit A," is my signature, and the amount, six hundred and eighty dollars, is the consideration agreed to be paid for the property therein enumerated—that is, I do not dispute it, but I do not recollect. I have no recollection that I collected any rents for the farm for the year 1869. I don't know that I rented the farm that year as agent for M'r Buffington. I do not
77 know what would be a reasonable cash rent for that farm. I do not know of any farm in that neighborhood renting for cash. I suppose that fifteen dollars per month would be a reasonable rent for the house in town. Property in town might rent for a little more now than the year I rented it.

Cross-examination:

I know that Buffington had no knowledge that I was going to sell the notes. He evidently had no interest in the notes I sold to Ferris. At the time I sold the property to Buffington I made no statement to him about my indebtedness. I can't tell whether Buffington had at that time any knowledge of my financial condition or not. There was not, at or before the sale, any agreement between Buffington and me as to my retaining any secret interest in the property. I have not since the sale of the property had any interest therein as owner. There is no agreement between us that in the event that Buffington should be successful in this suit, that he is to return me any of the property. I suppose the transaction between us was a bona-fide one on the part of Buffington; it was on my part. M'r Buffington never gave me any directions about the sale of the notes; I never consulted him about
78 the sale before it was made. The money paid on the Wood mortgage was derived from Buffington, although there was a turn

made in making the payment. I boarded Wood and his granddaughter, and kept some of Buffington's money for the amount due for board. I was examined as a witness in the injunction case in the bankruptcy proceedings. To my knowledge Buffington had no knowledge of my selling the notes to Linsley.

Re-examination:

I don't know when I boarded Wood and his granddaughter. It was after my bankruptcy but before I moved out on the farm. I boarded them to the amount of one hundred and thirty dollars, at the rate of six dollars per week for the two. I never settled with M'r Wood for the board; he died before we settled. I have never taken any receipts for money paid to Wood or Shafer. The reason that I sold all my property on a credit was that I had a thought of leaving the country. I was crowded, and I thought I would sell out and arrange my business myself. I had been notified by an attorney that legal proceedings would be commenced against me if I did not settle up within three days, and within that time I disposed of all the property before mentioned.

79 Question. Did you intend by this transfer to convey all your property to Titus Buffington which could be reached by your creditors.

Answer. I sold all my property with the intention of leaving the country.

Question. Did you intend to dispose of all your property which could be reached by your creditors in the transfer to Titus Buffington?

Answer. I did not do so to defraud my creditors.

Question. What property had you left?

Answer. I had a horse, buggy, wagon, cow, and perhaps some hogs—not very many, I guess—and an interest in the 60 acres of land mortgaged to M. R. Reeves & Co. I intended by that transfer to dispose of all my other property. Circumstances turned up so that I could not leave the country. I presume that one of these circumstances was the filing of the petition in bankruptcy against me.

Re-cross examination:

I did not state to Buffington my intention of leaving the country,
80 neither did I give him any reason why I wanted to dispose of the property.

ISAAC FITZGERREL.

Subscribed and sworn to before me this 28th day of December, A. D. 1872.

M. B. CONVERSE,
U. S. Commissioner.

(Indorsed:) Filed Jan'y 22d, A. D. 1873. J. A. Jones, cl'k.

Deposition of Titus Buffington.

Deposition of Titus Buffington, taken at Springfield, in said district, on the 26th day of December, A. D. 1872, by M. B. Converse, a commissioner of said circuit court of the United States, on behalf of the complainant.

TITUS BUFFINGTON, being by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, deposes and says:

I do not remember which of the notes mentioned in my answer were

given for the live stock; I do not know whether I gave more than one note for the live stock or not. My opinion is that I gave a
81 note for the live stock. It was the six-hundred-dollar note that was assigned to Scott. I do not remember which of the notes was assigned to Cooper. It was one that was not due. I was subpœnaed to bring with me the notes mentioned in my answer, and which I then answered that I had in my possession. The reason that I did not bring them was that I have not got them. I suppose that they were destroyed. I do not know who destroyed them or when they were destroyed. The last I saw of the notes was when M'r R. D. S. Filson gave them up to me, when they were paid off. The balance due on the notes was paid to M'r Filson. M'r Filson was my attorney at that time, and he drew the first two answers in the case. I think that it was in July, 1872, that I paid the amount to R. D. S. Filson. I do not remember the amount I paid to said Filson; there were some credits on the notes and some interest due. I don't think that I can approximate the amount I paid R. D. S. Filson. Previous to July, 1872, I paid the six-hundred-dollar note held by Scott. I made partial payments on that note, the last payment being about one hundred and forty dollars. Some of these payments I made to Scott personally. I gave M'r Fitzgerrel the sum
82 of one hundred dollars, and told him to pay it on the note held by Scott. I think M'r Fitzgerrel never made any payments on that note without my order. I think that Robinson & Boggs, attorneys, paid some money, realized from my castor-beans, on said note.

Question. State what payments were made upon these notes, or any of them, by yourself previous to July, 1872; state the time of each payment, the amount of each payment, and to whom payment was made, and upon which notes.

Answer. I can't state the amounts nor when paid, being three or four years ago. There were payments made, but I can't state upon which notes. I paid some money to Fitzgerrel. I think I did not pay any money to anybody except Fitzgerrel and Scott previous to July, A. D. 1872. I do not think I paid any money to Fitzgerrel before the notes became due.

Question. Did each note given for the land contain a description of the land for which it was given?

Answer. To the best of my knowledge, I think they did. I
83 think that the two notes given in 1870, for nine hundred and fifty dollars each, were given for lot number nineteen. I do not remember particularly about the others. The two notes given for said lot nineteen were the two that were destroyed. The notes were drawn by M'r J. H. McCartney, of Fairfield. There were two men on the two-hundred-acre farm that I bought of Fitzgerrel the first year after I purchased it. I think these two men were on the farm the first year. That is my opinion now. Jerry Rusher is the name of one of the men and John Fitzgerrel was the other. The latter is a son of Isaac Fitzgerrel. Rusher remained on the farm from March, 1868, to March, 1869. Rusher here referred to is not a relative of Isaac Fitzgerrel. I think that John Fitzgerrel was on the farm the same year that Rusher was. They were tenants on the farm. There was an agreement between them and me that they were to give me the customary share of the crop. I did not make any personal contract with said Rusher and said John Fitzgerrel. I think the contract was made through an agent that year. Isaac Fitzgerrel was that agent. There was at that time about eighty acres under cultivation of that farm. Said Rusher and John Fitzgerrel had all of the eighty acres. Of the forty-one and a half

84 acres near town there was about thirty-five or forty acres under cultivation. I cannot state what amo'nt of grain was raised upon these lands during the years 1868, 1869, 1870, 1871, and 1872. I have now no means of ascertaining the amount. I never kept any account of the amount raised. As the crop matured they divided it as it was gathered and brought in, putting my share in the cribs and garners. It is my understanding that my part of the crop for each year was kept separate. I do not know that it was kept separate. I have not seen my part of the crop separate from the other part. M'r Fitzgerrel did not give me any report of the amount of grain raised each year. In the summer of 1869 I sold some of the castor-beans that were raised on the place and hauled them to Clay City. I do not remember about making any other sales; I mean sales of grain. I have some of the tax-receipts which I was required to produce here. I have but one. I think I gave Fitzgerrel money to pay the taxes for the year 1870, as per Exhibit A, hereto attached. I think I gave him some, but do not know just the amount. I do not remember of giving him money any other year for the payment of taxes. I did not pay any six hun-
85 dred dollars on a mortgage. I can't state when I gave M'r Fitzgerrel directions to pay six hundred dollars on the incumbrances spoken of in my answer. It was paid by M'r Fitzgerrel, but I don't remember when. I can't tell when or where M'r Fitzgerrel got the money to pay said six hundred dollars. I never gave him the money to pay it. He got it from the rents & which he received from the parties to whom he rented the land. I do not know what year he got the money.

Question. Do you know of your own knowledge that he received this six hundred dollars from the rents of the farm?

Answer. I did not see the money paid to him.

Question. How do you know that it was your money that paid this six hundred dollars?

Answer. He told me so, I suppose. I do not remember when he told me so or where I was when he told me so. I will not swear positively that he told me so previous to the first of January, A. D. 1872, or at any other time. Since I purchased the farm there has been
86 eight acres of ground cleared. It was worth about eight dollars an acre to clear it. The timber cleared off was worth nothing. I was on the piece cleared before it was cleared, and was also on it about one year ago. The clearing was made, I think, in the spring of 1869, and a crop was raised in the summer of 1869 on said eight acres. This eight acres is in addition to the 80 acres. He also fenced the said eight acres, to do which was worth about twenty-four dollars; I should say about thirty dollars. He put a kitchen and porch to the house. The kitchen was built in 1869 or 1870, and the porch to the back part of the house was built at the same time. I do not remember the cost of it, but I suppose they cost about seventy-five dollars. The kitchen was built of logs and was covered with board. He made and put on the eighty acres first spoken of between three and four thousand rails. The rails were worth about three dollars per hundred. The rails were used partly to build new fence and partly to repair the old fence. I think that was all the repairs put on the two-hundred-acre farm. On the 41½-acre farm he made some new rails to repair the old fence. I do not know how many rails were used in repairing
87 the fence on this farm. I do not know of my own knowledge how many rails were used on these two farms; I only know from what M'r Fitzgerald told me. The dwelling-house in town on lot No. 19 was covered with shingles. The cost of covering the house, as re-

ported to me by my agent, M'r Fitzgerrel, was about seventy-five dollars. He put a new portico to the house. This was built in the summer of 1872, and cost about fifty dollars, as reported to me by my agent aforesaid. He bored the well about twelve feet, which was worth about five dollars. I do not remember of any more improvements. I cannot give the dates when the accountings between me and my agent, M'r Fitzgerrel, took place. I cannot at this time give the result of such accountings. He did not acco'nt regularly at the end of each year. I kept no memorandum of these accountings whatever. My part of the grain that was in the cribs before spoken of was fed to a part of the stock that was bought of Fitzgerrel and left on the Fitzgerrel farm. The cattle that I bought of Fitzgerrel I think were sold in the fall of 1869. The cattle remained on the farm from the time I bought them until I sold them, and were cared for by the men on the farm. Mr. Fitzgerrel was my agent, looking after these cattle. Rusher and
88 John Fitzgerrel were the tenants who took care of the cattle the first year. I cannot tell what Rusher and John Fitzgerrel did with the cattle or what control they had of them. I never took these cattle off the farm that I bought of *of* M'r Fitzgerrel after I bought them. He was agent, looking after them. I gave M'r Fitzgerrel no written power of attorney to act in any of these matters. I told M'r Fitzgerrel to go on and look after this property, and I would pay him whatever was right. I told him this after the purchase was made—some three months after. During the first three months after the cattle were purchased they were under the control of Rusher and John Fitzgerrel, tenants, who were both on the farm at the time I purchased it. I do not know whether they were tenants or employees of Isaac Fitzgerrel. After I purchased the cattle I do not know whether they were under the control of the employees of Isaac Fitzgerrel or not. Neither of these men were in my employ from the time of the purchase of the cattle up to April 1st, A. D. 1868, so far as I know. It seems to me that at the time of the purchase, or immediately thereafter, I took a part of the horses and mules home, and put them back on the Fitzgerrel place in the spring. I took no actual pos-
89 session of the cattle that remained on the Fitzgerrel farm, except through Isaac Fitzgerrel, my agent. I do not know what was done with the balance of the grain that was not consumed by the cattle. The goods that I purchased of Fitzgerrel were invoiced by Isaac Fitzgerrel, John Fitzgerrel, and myself. After I purchased the goods I hired a man by the name of Stanley and put him in the store. He remained there about three months. He came in some time in the month of January; from the first to the middle of January. He was not in in the first week of January; I mean January, 1868. I did not give M'r Fitzgerrel the same authority concerning the goods as I did concerning the farm, for the reason that I did not want him in there at that time. I employed M'r Fitzgerrel in the store some time in the spring of 1868. From the time of the purchase of the goods by me up to the following March, M'r Fitzgerrel had nothing whatever to do with the goods. I requested M'r Fitzgerrel some time in February to go in the store and give M'r Stanley some instruction about the price of the goods. Stanley had been selling goods some two or three weeks when I requested M'r Fitzgerrel to go in and give him instruction. Stanley was not
90 employed in the store when Fitzgerrel had it and was unacquainted with the stock when Fitzgerrel had it. Stanley had no assistance in the store except when I was in town, when I helped him. I was not in the store much. I don't remember the amo'nt of goods

sold to any particular person. I did not assist regularly in the store. I was in town sometimes ev'ry day, sometimes every other day, and sometimes once in three days. I cannot now name any person to whom I then sold goods. I do not remember whether I ever personally sold any of the goods or not. I don't think that Stanley was a man who had had much experience in selling goods or in the mercantile business. During the last ten years I have been engaged principally in farming and in mechanical business. The store is on the same lot that Fitzgerrel's dwelling-house is on. I had the key of the store from the time I purchased the goods up to the time that I put M'r Stanley in the store. I do not remember whether M'r Fitzgerrel had a key to the store or not. He gave me but one key when I purchased the goods. This key was in my possession all the time from the date of the purchase by me to the time I put Stanley in the store. This is my recollection. When
91 M'r Stanley went out I got M'r Fitzgerrel to go in the store. This was in the spring of 1868.

Question. Can you give dates nearer than "the spring?"

13. Answer. I cannot. After M'r Fitzgerrel went into the store he was alone, with the exception of the time I was in town, until the next fall. After M'r Fitzgerrel came into the store I ordered some coal-oil and paid for it. I also ordered some coffee and other goods that I don't remember just now, and paid for them. I purchased some goods to replenish the stock while Stanley was in the store; do not remember from whom I purchased them. I think the customary cash-rent of land in Wayne County is about from one dollar and a half to two dollars per acre; that is, in 1872. I do not know what, or, rather, how much, land in said county would rent for during the years 1868, 1869, 1870, and 1871. As near as I can say, the customary rent of the two farms spoken of would amount in cash to the sum of one hundred and fifty dollars per year; that is what I guess it at. Outside of the property in dispute, I don't know that I have any property not exempt from levy and
92 sale under execution. Since the purchase of the goods I don't know that I have sustained any losses by fire or any other cause. Since the purchase of the goods I have not disposed of any of my property without receiving an equivalent therefor, either in money or notes.

(All questions relating to the pecuniary circumstances of M'r Buffington now objected to by counsel for Buffington.)

Cross-examination:

M'r Fitzgerrel sold no goods for me till after the dissolution of the injunction in the original suit. He had no control of the goods; they were under my control. I think it was some two or three months from the time I purchased the goods till I was enjoined from selling them. I was enjoined by an injunction issued in the bankruptcy proceedings against Isaac Fitzgerrel, pending in the United States dist. court for the southern dist. of Ill's. The money that Fitzgerrel paid on the Wood mortgage was obtained from rent of the town property and farms, and from products of the farm, and was paid by my direction. The amount paid was about six hundred dollars. There still remains
93 due on the note and Wood mortgage some seven or eight hundred dollars. The money that was received from the sale of the goods I paid out on accounts, to hands hired on the farm. I never paid any of it to Fitzgerrel for his benefit without any consideration. I do not know that Fitzgerrel ever received directly or indirectly any benefit of the money received by me from the sale of goods. At the time the injunction was served on me, about one-fourth of the stock of goods had been

sold. They were sold for cash. None of the personal property bought by me of Fitzgerrel was taken from me by the assignee in bankruptcy of Isaac Fitzgerrel. M'r Fitzgerrel did not receive the use or benefit of any of the property purchased by me of him without paying rent for it. The rent he had to pay was as high as people generally paid in that section of the country. I left the stock I purchased of M'r Fitzgerrel on the farm for the benefit of the farm and because it was handy. The gross amount paid out by me on the notes given to Fitzgerrel was about thirty-five or thirty-six hundred dollars. I had no knowledge of the purchase of notes by Linsley at the time he bought them or before that time. At the time I made the purchase of the personal property
94 and real estate of Fitzgerrel I had no knowledge of his insolvency. I thought he was solvent. I told M'r Fitzgerrel to go on and make the necessary improvements and rent the property, collect the rents, and pay it out on certain things, on the mortgage and improvements. Under this authority he went ahead and made the improvement and paid out the money and collected the rents.

TITUS BUFFINGTON.

Subscribed and sworn to before me this 26th day of December, A. D. 1872.

M. B. CONVERSE,
U. S. Commissioner.

DECEMBER 28th, A. D. 1872.—Cross-examination of Titus Buffington, continued.

It was some time after I had made the purchase before I knew that Cooper had the note. The amount of that note I don't remember; it was some five hundred and odd dollars, to the best of my recollection. I had no knowledge of the purchase of the notes by Ferris. I don't know that Fitzgerrel has any interest in the notes purchased by Ferris. I had no acquaintance with Ferris at or before he purchased the
95 notes by him. I do not know him. I do not remember what the total value of the property purchased of Fitzgerrel by me was. It was about nine or ten thousand dollars. I was clerk in the store for Jesse Kearns, West Chester, Chester County, Penn., in my younger days. I was clerking for him about one year. I had no more to do with the mercantile business until after I came to Illinois. Somewhere in 1851 or 1852 I sold my farm and moved into Jeffersonville, Wayne County, Illinois, with the intention of engaging in the sale of goods. I had a partner with me, in the proposed sale of goods, by the name of Hugh McCoyne. I intended to go into the sale of goods, but on account of the death of McCoyne I did not. After Fitzgerrel was put into bankruptcy, I made no efforts to abandon the purchase I had made of him and to get possession of the notes. After the purchase made of him, and before he was put into bankruptcy, I went to Charles Beecher, the attorney of Bell & Son, and asked him if I should give up the property if I could get my notes back. He said he did not know, but that he was coming up to Springfield, and would ask Hay and would let me know. He did not let me know anything about it until I came up to
96 Springfield. He said I could give up the property, but I could not get my notes back without paying them off. That is all the effort I made to give up the property and get my notes back. My reason for purchasing the property was they were talking of building the Southeastern Railroad, and I thought that property would advance rapidly; that is the reason why I purchased it. The reason for describing the property in the notes given therefor was to secure the payment without homestead or widow's dower. At the time I made the pur-

chase the reputation of Mr. Fitzgerrel in that community was that he was solvent, so far as I ever heard. There was no understanding between me and Fitzgerrel that he was to have any of the proceeds of this property back from me. It was my understanding that the transaction between me and Fitzgerrel was a fair and bona fide one. It was a fair and bona fide transaction.

Re-examination:

The thirty-five hundred dollars that I have paid on the notes includes the payments made by me, the endorsements put upon the notes by Fitzgerrel, and the payment made on the note held by Scott, and the payment made to R. D. S. Tilson. In the estimates of the valu-
97 ation of the *valuation of the* property given by me in my cross-examination, I arrived at the value by actual estimate, as near as I can remember at this time.

Question. Will you state how this estimate given in your cross-examination is made up?

Answer. It was from the amounts set forth in the deeds and the notes, to the best of my recollection. I have no other way of ascertaining the value of the property than as it is set forth in the deeds and the notes. In giving the estimates I testify from the best of my recollection. I testify from memory. I do not remember what I was to give for the lot in town. I don't remember what I was to give for the 41½ acres near town. I don't remember what I was to give for the two-hundred-acre farm. I do not remember just what I was to give for any particular piece of land included in the deeds. In my conversation with M'r Beecher I did not tell him that I had no interest in the land or that I took it for M'r Fitzgerrel, nor did I tell any other person so. I only wanted to give up the property and get my notes back.

98 TITUS BUFFINGTON.

Subscribed and sworn to before me this 28th day of December, 1872.

M. B. CONVERSE,
U. S. Commissioner.

EXHIBIT A.—M. B. CONVERSE, *Commissioner.*

BARNHILL TOWNSHIP, *Wayne County, Illinois.*

Received of Titus Buffington, for Isaac Fitzgerrel, ($120.64,) one hundred and twenty and $\frac{64}{100}$ dollars, the State, county, school, town, road, railroad, and dog tax, for the year 1870, on the following real estate:

Subdivision of section.	Section.	Town.	Range.	Acres.	Value.	Amount.
N. p't S. E.	9	1 S.	8 E.	133	$545	$21 61
P't N. p't S. W.	10	"	"	66	219	8 67
N. ½ S. E.	33	"	"	80	358	13 11
N. E. N. E.	4	2 S.	8 E.	40	201	6 02
P't N. E.	6	"	"	42	425	14 95
Lot No. 17, town of Fairfield					106	4 69
" 19, " "					1,060	46 88
" 3, Barnhill's add.					80	3 52
" 4, " "					27	1 19
						$120 64
Personal property						$

Duplicate receipt. This Dec. 18, 1872.

99 JOHN A. MOFFITT, *Collector.*

EXHIBIT B.—M. B. CONVERSE, *U. S. Commissioner.*

Know all men by these presents that I, Isaac Fitzgerrel, of Fairfield, in the county of Wayne and State of Illinois, in consideration of the sum of six hundred and eighty dollars, to me paid by Titus Buffington, of said Wayne County, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have bargained, sold, and delivered, and by these presents do bargain, sell, and deliver unto the said Titus Buffington,

One bay horse mule, 4 years old;
" gray mare mule, 4 years old;
" sorrel horse mule, 3 years old;
" sorrel mare with white face, about 12 years old;
" bay filly, 2 years old;
" sorrel horse colt, 1 year old;
Four cows;
Two yearling steers;

to have and to hold the said goods unto the said Titus Buffington, his executors, administrators, and assigns, to his and their own proper use and behoof forever; and I, the said Isaac Fitzgerrel, for
100 myself and my heirs, executors, and assign', will warrant and defend the title to the above-specified property against the claims of all persons whomsoever.

In witness whereof I have hereunto set my hand and seal this 30th day of December, A. D. 1867.

ISAAC FITZGERREL. [SEAL.]

Signed, sealed, & delivered in presence of—
JAMES MCCARTNEY.
JOHN T. FITZGERREL.

EXHIBIT C.—M. B. CONVERSE, *U. S. Commissioner.*

STATE OF ILLINOIS,
Wayne County, ss:

The people of the State of Illinois to the sheriff of Clay County, greeting:

We command you that you summon Isaac Fitzgerrel, Titus Buffington, Jane Fitzgerrel, John T. Fitzgerrel, and George W. Fitzgerrel, if they shall be found in your county, personally to be and appear before the circuit court of said county, on the first day of the next term thereof, to be holden at the court-house in the town of Fairfield, in said Wayne County, on the fourth Monday of August, A. D. 1871, to
101 answer unto Edward B. Hanna, Wilmoth J. Hanna, Willis Shumake, Harriet B. Shumake, James M. Fitzgerrel, and Isaac J. Fitzgerrel in their certain bill of complaint for relief, filed in said court on the chancery side thereof. And have you then and there this writ, with an endorsement thereon in what manner you shall have executed the same.

Witness John L. Handley, clerk of the circuit court, and the seal thereof, at his office in Fairfield, in said Wayne County, this 18th day July, A. D. 1871.

[SEAL.] JOHN L. HANDLEY, *Clerk.*

STATE OF ILLINOIS,
Clay County, ss:

I, John R. Tanner, sheriff of Clay County, Illinois, do hereby certify that the above is a correct copy of the summons issued out of the office of the clerk of the circuit court of Clay County, Illinois, in the case of E. B. Harma et al., plaintiff, against Isaac Fitzgerrel et al's, defendant'.

JOHN R. TANNER,
Sheriff of Clay County, Illinois,
Per THO'S T. AUSTIN,
Deputy.

102 EXHIBIT D.—M. B. CONVERSE, *U. S. Commissioner.*

This indenture, made and entered into this first day of January, A. D. 1868, by and between Titus Buffington, party of the first part, and Isaac Fitzgerrel, party of the second part, witnesseth that the said party of the first part, for and in consideration of the payment to be made as hereinafter described, hereby rents and leases to the said party of the second part the following-described premises, to wit: all of lot No. nineteen (19) in the original town of Fairfield, except the store-room and ground occupied by the store-house on said lot, which store-house and shop now occupied as a milliner shop, in said store-building, and also the ground upon said lot now used as a wood-yard for said store-house, all of which is hereby reserved; also renting and leasing to the said party of the second part all of lot No. 17 in the said town of Fairfield, now occupied and used as a barn-lot; also 41¾ acres of ground lying north and adjoining said town of Fairfield, on the north side of Johnson Creek, and more particularly described in a deed made, executed, and delivered to me by the said Isaac Fitzgerrel & wife, dated Dec. 30th, 1867,
103 said above-described lease to continue one year from this date. And the said Isaac Fitzgerrel hereby agrees to pay the said party of the first part the sum of two hundred and seventy-two dollars, to be paid at or before the expiration of this lease. The said party of the second part hereby also agrees to keep the said premises in good repair, necessary wear and tear excepted, and to deliver up the possession of the same to the said party of the first part at the end of one year from this date.

Witness our hands and seals the day and date above written.

TITUS BUFFINGTON. [SEAL.]
ISAAC FITZGERREL. [SEAL.]

[Inter. rev. st'ps, 5 c'ts.]

EXHIBIT E.—M. B. CONVERSE, *U. S. Commissioner.*

This indenture, made and entered into the thirtieth day of December, in the year of our Lord one thousand eight hundred and sixty-seven, between Isaac Fitzgerrel and Martha Fitzgerrel, his wife, of the county of Wayne and State of Illinois, parties of the first part, and Titus Buffington, of the county of Wayne and State of Illinois, party of the second part, witnesseth:

104 That the said parties of the first part, for and in consideration of the sum of twenty-eight hundred and fifty dollars in hand paid by the said party of the second part, the receipt of which is hereby acknowledged, do hereby grant, bargain, and sell unto the said party of the second part, his heirs and assigns, certain tracts of land, situate,

lying, and being in the county of Wayne and State of Illinois, known, designated, and described as follows, to wit: The southeast quarter of section nine (9) and the west half of the southwest quarter of section ten (10) in town. one (1) south, range eight (8) east, except ½ acre heretofore set apart for a family burying-ground for hand and relatives. Also, a strip of forty acres off the south side of the whole strip heretofore conveyed to James A. McLin; also, the undivided half of the N.E. ¼, S.W. q'r, and the N.W. ¼ of the southeast quarter of section twenty-two, (22,) town. one (1) north, range six (6) east; also, the northeast ¼ of the northeast q'r of section four, (4,) town. two (2) south, range eight (8) east; also, the north ½ of the southeast q'r of section thirty-three, (33,) town. one (1) south, range eight (8) east of the 3rd p. m.

And for the consideration aforesaid, the said parties of the first part hereby waive and release, confirm and transfer, and forever relin-
105 quish to the said party of the second part all right, interest, or title they may now have, or may hereafter acquire, in and to the real estate hereinbefore described, by virtue of the laws of the State of Illinois, approved February 11th, A. D. 1851, entitled "An act to exempt homesteads from sale on execution," and all laws amendatory thereof.

To have and to hold the aforesaid tracts or parcels of land free from all homestead exemption rights, together with all the appurtenances thereunto belonging or in anywise appertaining, to the only proper use and benefit of him the said party of the second part, his heirs and assigns forever. And the said parties of the first part, for their heirs, executors, and administrators, do covenant with the said party of the second part that they are lawfully seized, that said land is free from all incumbrance, that they have full right to convey and will forever warrant and defend the said tract of land from the claim of them, the said parties of the first part, their heirs and assigns, and against the claim or claims of any other person whomsoever.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

106 ISAAC FITZGERREL. [SEAL.]
MARTHA FITZGERREL. [SEAL.]

In presence of—

[In. rev. st'ps, $2.00.]

STATE OF ILLINOIS,
Wayne County, ss:

Before me, the undersigned, a notary public within and for the county aforesaid, came Isaac Fitzgerrel, who is personally known to me as the real person by whom and in whose name the above conveyance was executed, and by whom and in whose name the same is proposed to be acknowledged, and who then severally acknowledged his signature thereto to be his free and voluntary act and deed for the purpose of waiving and releasing all right, title, and interest in and to said land by virtue of the homestead-exemption laws of said State, and for all the other purposes therein expressed; and the said Martha Fitzgerrel, wife of the said Isaac Fitzgerrel, being by me first examined separate and apart from her said husband, and the contents of the said conveyance being first made known to her, acknowledged that freely and voluntarily, without any compulsion or coercion from her said husband that she executed
107 the same, and forever released and waived all right, interest, or title to said real estate by virtue of the homestead exemption laws of said State, relinquished all her right to the claim of dower in and to

the lands and tenements in said conveyance described, and sold, transferred, and conveyed all her title in fee-simple, or right by inheritance, in and to the real estate aforesaid, and that she does not wish to retract.

Given under my hand and official seal, this 30th day of December, in the year of our Lord one thousand eight hundred and sixty-seven.

[SEAL.] JAMES McCARTNEY, [SEAL.]
N. P., Wayne Co., Ill's.

[U. S. int. revenue stamps amounting to $2.00, canceled]

STATE OF ILLINOIS,
Wayne County, ss:

This deed was filed for record at 2 p. m. this 1st Jan'y, 1868, and duly recorded in Book No. V, page 211.

W. L. CASH, *Recorder.*

EXHIBIT F.—M. B. CONVERSE, *U. S. Commissioner.*

This indenture, made and entered into the thirtieth day of De-
108 cember, in the year of our Lord one thousand eight hundred and sixty-seven, between Isaac Fitzgerrel and Martha Fitzgerrel, his wife, of the county of Wayne and State of Illinois, parties of the first part, and Titus Buffington, of the county of Wayne and State of Illinois, party of the second part, witnesseth that the said parties of the first part, for and in consideration of the sum of five thousand one hundred dollars, in hand paid by the said party of the second part, the receipt of which is hereby acknowledged, do hereby grant, bargain, and sell unto the said party of the second part, his heirs and assigns, certain tracts of land lying and being in the county of Wayne and State of Illinois, known, designated, and described as follows, to wit: Lot No. 19 in the original town of Fairfield; also, lot No. 17 in the original town of Fairfield; also, lots No. two (2) and three (3) in Barnhill's addition to the said town of Fairfield; also, a tract of land described as follows: Beginning on the dividing line between the northeast and the northwest quarter of section six, (6,) in town. two (2) south, of range eight (8) east, at a small cherry-tree 28½ rods north from the northwest corner of lot
No. (8) in the town of Fairfield; thence running due east until it
109 intersects the first small ravine; thence down said ravine to the middle of Johnson's Creek; thence down said creek until it reaches the mouth of the second branch that empties into Johnson's Creek on the north side; thence north with said branch to the north line of the northeast q'r of sec. 6, T. 2 S., R. 8 E.; thence with said line to the northwest corner of said q'r-section; thence south to the place of beginning; excepting one acre and one-quarter acre now used as a cemetery; also, excepting five acres heretofore sold to the Agricultural Society for a fair-ground; also, excepting two acres heretofore sold to James B. Ardeny.

And for the consideration aforesaid, the said parties of the first part hereby waive and release, confirm and transfer, and forever relinquish to the said party of the second part all right, interest, or title they may now have or may hereafter acquire in and to the real estate hereinbefore described, by virtue of the laws of the State of Illinois, approved February 11th, A. D. 1851, entitled "An act to exempt homesteads from sale on execution," and all laws amendatory thereof.

To have and to hold the aforesaid tracts or parcels of land, free from all homestead-exemption rights, together with all the appurte-
110 nances thereunto belonging or in any wise appertaining, to the

only proper use and benefit of the said party of the second part, his heirs and assigns forever. And the said parties of the first part, for themselves, their heirs, executors, and administrators, do covenant with the said party of the second part that they are lawfully seized, that said land is free from all incumbrance, that they have full right to convey, and will forever warrant and defend the said tract of land from the claims of them, the said parties of the first part, their heirs and assigns, and against the claim or claims of any other person whomsoever.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

ISAAC FITZGERREL. [SEAL.]
MARTHA FITZGERREL. [SEAL.]

[U. S. rev. s'ps, $5 $^{00}_{100}$, canceled.]

STATE OF ILLINOIS,
Wayne County, ss:

Before me, the undersigned, notary public within and for the county aforesaid, came Isaac Fitzgerrel, who is personally known to me as the real person by whom and in whose name the above conveyance was executed, and by whom and in whose name the same is
111 proposed to be acknowledged, and who then severally acknowledged his signature thereto to be his free and voluntary act and deed, for the purpose of waiving and releasing all right, title, and interest in and to said land, by virtue of the homestead exemption laws of said State, and for all the other purposes therein expressed. And the said Martha Fitzgerrel, wife of the said Isaac Fitzgerrel, being by me first examined, separate and apart from her said husband, and the contents of the said conveyance being first made known to her, acknowledged that freely and voluntarily, without any compulsion or coercion from her said husband, that she executed the same, and forever released and waived all right, interest, or title to said real estate, by virtue of the homestead exemption laws of said State, relinquished all her right to the claim of dower in and to the land and tenements in said conveyance described, and sold, transferred, and conveyed all her title in fee-simple, or right by inheritance, in and to the real estate aforesaid, and that she does not wish to retract.

Given under my hand and official seal this 30th day of De-
[SEAL.] cember, in the year of our Lord one thousand eight hundred and sixty-seven.

JAMES McCARTNEY,
N. P., Wayne Co., Ills. [SEAL.]

112 STATE OF ILLINOIS,
Wayne Co., ss:

This deed was filed for record at 2 p. m. this 1st Jan'y, 1868, and duly recorded in Book No. V, page 209.

W. L. GASH, *Recorder.*

EXHIBIT G.—M. B. CONVERSE, *U. S. Commissioner.*

DISTRICT COURT OF THE UNITED STATES OF AMERICA,
Southern District of Illinois, ss:

The United States of America to Isaac Fitzgerrel and Titus Buffington, and to your counselors, attorneys, solicitors, trustees, and agents, and to each and every of them, greeting:

Whereas it hath been represented to the judge of our district court

of the United States for the southern district of Illinois, in bankruptcy sitting, on the part of Henry Bell, Daniel W. Bell, John P. Boogher, and Jesse L. Booghers, copartners as Henry Bell & Son, petitioner in a certain petition for adjudication in bankruptcy, exhibited in our court, before the judge of said court, against you, the said Isaac Fitzgerrel, to be relieved touching the matter complained of, in
113 which said petition it is stated, among other things, that you did commit an act of bankruptcy within the meaning of said act, in this, that you being the owner of and possessed of certain real estate and personal property, to wit: Lot No. 19, in Fairfield, Ill., on which is situated a dwelling-house and store-house, containing a stock of merchandise belonging to you; lot No. 17, Fairfield, Ills.; lots Nos. 2 & 3, in Bamhill's addition to Fairfield, Illinois, about 65 acres in N. E. qr.; sec. 6, T. 2 S., R. 8 E.; S. E. qr. sec. 9 & W. ½ S. W. qr. sec. 10, T. 1 S. R. 8 E., except about 42 acres; the N. E. ¼ N. E. qr. sec. 4, T. 2 S., R. 8 E.; the W. ½ S. E. qr. sec. 33, T. 1 S., R. 8 E., and undivided ½ of N. E. ¼, S. W. qr., & S. W. ¼ S. E. qr. sec. 22, T. 1 N., R. 6 E., all in Wayne County, in the State of Illinois; and being so possessed did convey and transfer to one Titus Buffington, you, the said Isaac Fitzgerrel, being insolvent and in contemplation of insolvency, and also with the further intent to hinder, delay, and defraud your said creditors, and also to defeat the operation of the bankrupt act, and also that you, the said Isaac Fitzgerrel, being a merchant, did suspend the payment of your commercial paper, and have not and did not resume the payment
114 thereof for a period of fourteen days; and further, that at the time of making such transfer the said Titus Buffington well knew that you were insolvent and in failing circumstance', all which doing' are contrary to the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2nd, 1867.

And it being ordered that a writ of injunction issue out of said court upon said petition, enjoining and restraining you and each of you as prayed for in said petition, we therefore, in consideration thereof, and of particular matters in said petition set forth, do strictly command you, the said Isaac Fitzgerrel and Titus Buffington, your counselors, attorneys, solicitors, trustees, and agents, and each and every of you, that you do absolutely desist and refrain from in any manner selling or disposing of the aforesaid real estate and premises, and also the stock of merchandise so transferred, or that you in any manner interfere with or intermeddle with the same, until this honorable court in bankruptcy sitting shall make other order to the contrary. Hereof fail not under the penalty of what the law directs.

115 To the marshal of the southern district of Illinois to execute and return in due form of law.

Witness the Hon. Samuel H. Treat, judge of our said district court, at Springfield, in said district, this 18th day of April, in the year of our Lord one thousand eight hundred and sixty-eight, and of our Independence the ninety-second year.

[SEAL.] GEO. P. BOWEN, *Clerk.*

116 EXHIBIT H.

UNITED STATES OF AMERICA,
Southern District of Illinois, ss:

The United States of America to Titus Buffington, greeting:

We command you and every of you, that you appear before our

judges of our circuit court of the United States of America for the southern district of Illinois, at Springfield, in said district, on the first Monday in the month of May next, to answer the bill of complaint of Charles D. Harvey, assignee in bankruptcy of Isaac Fitzgerald, this day filed in the clerk's office of said court, in said city of Springfield, then and there to receive and abide such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the southern district of Illinois to execute.

Witness the Hon. Salmon P. Chase, Chief-Justice of the Supreme Court of the United States of America, at Springfield aforesaid,
117 this twentieth day of March in the year of our Lord one thousand eight hundred and seventy-two, and of our Independence the ninety sixth year.

[SEAL.] J. A. JONES, *Clerk.*

MEMORANDUM.

The above-named defendant is notified that unless he shall enter his appearance in the clerk's office of said court, at Springfield aforesaid, on or before the day to which the above writ is returnable, the complainant's bill will be taken against him as confessed and a decree entered accordingly.

J. A. JONES, *Clerk.*

Exhibit H.—M. B. Converse, U. S. commissioner.

I hereby appoint W'm Littlejohn my special deputy to execute this writ, M'ch 20th, 1872.

EDWARD R. ROE, *U. S. Marshal.*

Executed this writ on the 26th day of March, A. D. 1872, by delivering a true copy of the same to the within-named Titus Buffington.

EDWARD R. ROE, *U. S. Marshal,*
By W'M LITTLEJOHN, *Special Deputy.*

118 EXHIBIT I.—M. B. CONVERSE, *U. S. Commissioner.*

Circuit court of the United States of America, southern district of Illinois, ss:

The United States of America to Titus Buffington, and to your counsellors, attorneys, solicitors, trustees, and agents, and to each and every of them, greeting:

Whereas it hath been represented to the judges of our circuit court of the United States for the southern district of Illinois, in chancery sitting, on the part of Charles D. Harvey, assignee in bankruptcy of Isaac Fitzgerrel, complainant in a certain bill of complaint, exhibited in our said circuit court, on the chancery side thereof, before the judges of said court, against you, the said Titus Buffington, to be relieved touching the matters complained of. In said bill it is stated among other things that you are combining and confederating with others to injure the complain't touching the matters set forth in the said bill, and that your actings and doings in the premises are contrary to equity and good conscience; and it being ordered that a writ of injunction issue

out of said court upon said bill, enjoining and restraining you, and
119 each of you, as prayed for in said bill:

Therefore, in consideration thereof, and of the particular matters in said bill set forth, we do strictly command you, the said Titus Buffington, your counsellors, attorneys, solicitors, trustees, and agents, and each and every of you, that you do absolutely desist and refrain from selling, transferring, or disposing of the following-described real estate situate in Wayne County, Illinois, to wit:

The southeast quarter of section nine, (9,) and the west half of the southwest quarter of section ten, (10,) in township one (1) south, range eight (8) east, except one-half (½) acre, heretofore set apart for a family burying-ground. Also a strip of forty (40) acres off the south side of whole strip heretofore conveyed to James A. McLin. Also the undivided one-half (½) of the northeast quarter (¼) of the southwest quarter, (¼,) and the southwest quarter (¼) of the southeast quarter (¼) of section twenty-two, (22,) township one (1) north, range six (6) east. Also, the northeast quarter (¼) of the northeast quarter (¼) of section four, (4,) town. (2) south, range eight (8) east. Also, the north half of the
120 southeast quarter of section thirty-three, (33,) town. one (1) south, range eight (8) east of 3d p. m. Also, lot No. nineteen, (19,) in original town of Fairfield. Also, lot No. seventeen (17) in the original town of Fairfield. Also, lot No. two (2) in Barnhill's addition to town of Fairfield. Also, a tract of land described as follows, to wit: Beginning in the dividing-line between the northeast and the northwest quarter of section six, (6,) town. two (2) south, of range eight, (8,) at a small cherry-tree, twenty-eight and one-half (28½) rods north from the northwest corner of lot No. eight (8) in the town of Fairfield; thence running due east until it intersects the first small ravine; thence down said ravine to the middle of Johnson Creek; thence down said creek until it reaches the mouth of the second branch that empties into Johnson Creek on the north side; thence north with said branch to the north line of the northeast quarter of section six, (6,) township two (2) south, range eight (8) east; thence with said line to the northwest corner of said quarter-section; thence south to the place of beginning, excepting one acre and one-quarter acre now needed as a cemetery. Also, excepting five acres heretofore sold to the Agricultural Society for a
121 fair-ground; also excepting two acres heretofore sold to James B. Ardery. Valued at about $12,000.00;

Until this honorable court in chancery sitting shall make other order to the contrary. Hereof fail not under the penalty of what the law directs.

To the marshal of the southern district of Illinois to execute and return in due form of law.

Witness the Hon. Salmon P. Chase, Chief-Justice of the Supreme Court of the United States of America, at Springfield, in said district, this twentieth day of March, in the year of our Lord one thousand eight hundred and seventy-two, and of our Independence the ninety-sixth year.

[SEAL.] J. A. JONES, *Clerk.*

122 EXHIBIT K.—M. B. CONVERSE, *U. S. Commissioner.*

Circuit court of the United States, southern district of Illinois, ss:

The United States of America to the marshal of the southern district of Illinois, greeting:

We command you to summon Titus Buffington, Isaac Fitzgerrel, James McCartney, and Leander Linsley, if found in your district, to be and

appear before the master in chancery of our circuit court of the United States for the southern district of Illinois, at his office in the city of Springfield, in said district, on Thursday, the nineteenth day of December, eighteen hundred and seventy-two, (1872,) at ten o'clock a. m., to testify all and singular what they may know in a certain cause in the said court depending, wherein C. D. Harvey, assignee of Isaac Fitzgerrel, bankrupt, is complainant, and Titus Buffington is defendant, in behalf of said complainant; and that the said Titus Buffington bring with him and produce before our said master all the notes which in his answer on file in said court in said cause he claims to have paid

123 M'r Pherris [Ferris;] also, that the said Titus Buffington bring with him and produce before our said master all the tax-receipts for taxes which he claims in said answer to have paid upon the property in controversy in said suit; also, that the said Titus Buffington bring with him and produce before our said master all his books of account, statements of settlement, memorandums, and papers of every kind which in any way relate to his dealings with said Isaac Fitzgerrel, or which relate to any dealings growing out of said transaction with Isaac Fitzgerrel, or which in any way relate to the property in controversy, or the renting of the same; also that the said Isaac Fitzgerrel bring with him and produce before our said master all his books of account, papers, memorandums, papers, and receipts, in any way relating to his dealings with Titus Buffington; also, that the said Isaac Fitzgerrel bring with him and produce before our said master all the notes he has or can control, which were given by Titus Buffington to said Fitzgerrel, in December, A. D. 1867.

124 And this they are in no wise to omit, under the penalty of the law in that case made and provided. And have you then and there this writ.

Witness the Hon. Salmon P. Chase, Chief-Justice of the Supreme Court of the United States of America, at Springfield aforesaid, this twelfth day of December, in the year of our Lord one thousand eight hundred and seventy-two, and of our Independence the ninety-seventh.

[SEAL.] J. A. JONES, *Clerk.*

125 EXHIBIT L.—M. B. CONVERSE, *U. S. Commissioner.*

ASHLEY, ILL'S, *Dec.* 20, 1872.

TITUS BUFFINGTON, Esq., *Xenia, Ill's:*

DEAR SIR: I have a capias for the arrest of yourself and the three at Fairfield. I expect to leave that place with them in custody Monday morning. Please meet me at Flora with the papers ordered in the summons I served last week.

I may fail to get up on the morning train, but, if I am not there, either go on to Springfield or telegraph me at F., or wait till I come by. I will pay your fare to Springfield. I will try and send you further notice by telegraph, but come anyhow.

Your friend,

E. R. ROE, *U. S. M.*

Exhibit L.

126 EXHIBIT M.—M. B. CONVERSE, *U. S. Commissioner.*

[Office of Bradley & Olden, attorneys at law, Washington st., near n. w. corner Capitol Square.]

SPRINGFIELD, ILL., *June 26th*, 1868.

Mr. TITUS BUFFINGTON, *Fairfield, Ill's:*

DEAR SIR: To-day we got a decision in Fitzgerrel's case. The court

adjudged him a bankrupt and dissolved the injunction against you. So you are now free to do what you please with your property. You better not open your store until you get official notice from the court of the dissolving the injunction, and after this you can make a good bill of damages out of them for keeping your store shut up, &c.

We have written Fitzgerrel about his case to-day and advised him. Any information you may want in relation to this or other matters let us know & we will write you. You will have no more to do with the Fitzgerrel matter until the assignee is appointed. We can save your property beyond a doubt.

Yours, &c.,

BRADLEY & OLDEN.

Exhibit M.

(Endorsed:) Filed Jan'y 22d, A. D. 1873. J. A. Jones, clerk.

127 *Deposition of Titus Buffington, No. 2.*

Deposition of Titus Buffington, taken before Richmond Wolcott, special commissioner of the district court of the United States for the southern district of Illinois, this 17th day of January, A. D. 1872.

My name is Titus Buffington. I live in Xenia, Clay Co. In 1867 I lived two or three miles from Fairfield, in Wayne Co. I was a farmer at that time. About 1867 I bought some property of Isaac Fitzgerrel, of Fairfield; I bought about four tracts of land in separate parcels. The largest piece was about 160 acres; this was partly improved. I don't remember the valuation put upon this piece. There was another piece adjoining the town of Fairfield, consisting about 28 or 30 acres. I think we put a value of $40 per acre on that. I think the improved farm above spoken of was put at $15.00 an acre. Then there was about 120 acres in the timber below. I think that was estimated at $10 an acre. Then there was an undivided half of an eighty-acre tract. I think that was valued at $3.00 an acre. I did not go over these lands at the time of the purchase; I went on to the piece near town. The other
128 lands I was acquainted with. I also bought of Fitzgerrel three town lots in the town of Fairfield; two of them were out-lots; one of them was valued at $70 or $75. The other out-lot was put in at $50 or $100, or something like that. The house and lot up near the square was put in at about $2,000, if I am not mistaken. It may have been a little more than that. I think that was all the real estate I bought of him. I bought some store goods of him that were invoiced at about $2,300 or $2,500. M'r McCartney, M'r Fitzgerrel, and I invoiced them. M'r McCartney was an attorney at Fairfield. He was my attorney at that time. I also bought some stock that was on the farm. Four or five young cattle; one or two, may be three, horses; some young mules, two, I think; I should suppose at a rough guess there was some $300.00; $400.00 worth in all. I can't remember the exact amount. I don't remember who I sold the cattle to. I did not take them off the place. I did not sell them myself. I think Fitzgerrel sold them; either him or his son John. I had the mules and horses on my own farm the first winter after I bought them. In the spring I sent them back to
129 the farm I bought of Fitzgerrel. Fitzgerrel was over seeing the farm at the time. His son was living on it. The mules I afterward sent to S't Louis by Fitzgerrel. He was going out, and I told him I thought he could do as well with them at S't Louis as he could anywhere else. I did not want them any more. They were not sold there,

but he brought them back to Illinois and left them with a son-in-law of his, who traded with them and accounted to us for the proceeds. I think they fetched us about $80.00 apiece. The money was not given to me. Fitzgerrel has never accounted to me for it, nor for the proceeds of the cattle. We never have had a final settlement. One of the horses died; I think Fitzgerrel sold the other one. I think I never gave Fitzgerrel a price at which to sell this stock. I have never received anything from the proceeds of those sales, except in improvements on the land he sold me. I kept the store open three or four months after I bought the goods, and sold some of them—most of them; then I rented the house out and boxed the rest of the goods up. I had a clerk in the store. I did not sell them myself. My first clerk was named Stanley; I
130 think he was in about two months. He went in immediately after I bought the stock. M'r Fitzgerrel was in the store in this way. I asked him to look after the business, but I don't think he was in much; only once in a while he went in and gave Stanley instruction and advice. He live' right adjoining the store. I don't remember how much the goods sold at retail brought. After Stanley went out of the store I employed Fitzgerrel. He has never accounted to me for the proceeds of sales. The understanding between Fitzgerrel & me was that I would do whatever was right with him in payment for what he did. There was no set salary. I don't think he ever said anything to me about selling goods to parties that he was owing to; he may have done so, but I don't remember it. I got the proceeds while Stanley was in. I think all the proceeds were used in replacing the stock. I don't know what become of the proceeds of the sales made by Fitzgerrel. He has never accounted to me for them. I never have asked him to. Fitzgerrel got the benefit of the stock sold by him, including the new stock that was put in. I hold all the real estate yet that I bought of Fitz-
131 gerrel, except a small portion of that adjoining the town. Fitzgerrel sold me all the property and goods on time. I gave my notes, a certain amount of them coming due every year until 1874. I can't tell the amount of the notes. They were divided up so that they were small enough for me to pay them when they became due. I think they were made payable on the first of January in each year. I think probably they were two came due on the first of January after I bought; these, I think one of them was for $600, and the other for $700, or thereabouts. The next January there were two more; I think these two more for $900.00 each. The next January two more for $900.00 each. I think the next January there was only one came due; I think that was for $950.00; that's about the way they run; all of them draw 6 per cent. interest.

The reason the first two notes were made of that particular size was because Fitzgerrel said he wanted to use them to pay some debts of that amount. I think George Scott got the $600.00 note. I have heard since that Thomas Cooper has the $700.00 note. I cannot give the
132 total amount of all the notes. The consideration expressed in the deeds from Fitzgerrel to me states truly the consideration I gave for the land only. There was a mortgage on the largest tract of $1,000.00. The arrangement was that I was to pay that off. I took it subject to the mortgage. That mortgage has been due a good while. It has not been paid. The mortgagee died, and his executor said he only wanted to get the interest. I have not paid the principal or authorized any one to pay it for me. From the farm property I have received $300.00 or $400.00 rent in castor-beans. They were raised under Fitzgerrel's superintendence. They were applied upon the Scott note. I

have received no other rent except in improvements and payment of taxes by Fitzgerrel. There has been no contract with Fitzgerrel in regard to rent. I only told him to go on and make improvements and repairs, and keep an account of it so that we can settle. He has cleared up about 20 acres of the farm and fenced it. We have had no settlement. He has sometimes rented some of it to subtenants. The rents he collected from them was received by Fitzgerrel in money and expended in improvements. He has also received rents from
133 the property in town, the store-house. I can't state what amount has been spent in improvements, repairs, and taxes. Fitzgerrel has not been in possession of the farm all the time since the sale to me. It was under my jurisdiction for the first three months after I bought it. The man who was on it when I bought it staid on it three months. He didn't suit me, and I then hired Fitzgerrel to superintend both the store and the farm. I can't remember the man's name who was on the farm the first three months. I paid him for his services part in money and part in goods from the store.

When I bought the property, I delivered my notes to Isaac Fitzgerrel. I have heard from the notes that Fitzgerrel transferred to Scott and to Cooper. I have heard nothing about the rest. I think there are $5,200.00 of these with interest thereon from date at 6% per annum, now due and unpaid. The interest was payable annually. I have never been called on to pay either principal or interest. I can't find where they are. I never have authorized any one to purchase these notes or to negotiate in any way concerning them. M'r McCartney was
134 my attorney in relation to this transfer from Fitzgerrel to me.

He was employed to get up the papers and to give me such advice as I might need in relation to the matter. I think I may have asked McCartney whether the transfer could be legally made, I don't remember certainly about the exact words; I think I probably asked him something about it; I don't know that any question was raised as to whether Fitzgerrel could sell to me in this way. The way I came to buy this property was this: I had sold my homestead to a man by the name of Fanke, because I had a notion to go into the business of selling goods. Fitzgerrel offered me this property, and I thought I could do as well there as anywhere. He came to my house about it; I don't think that he gave me any reason why he wanted to sell. I don't remember who proposed the trade first. We were talking about farming and selling goods. We have been visiting backwards and forwards for twenty-five yeras. He told me he had a good location for selling goods, and that he would sell. He didn't at that time, so far as I know, say why he wanted
135 to sell; I didn't make him any proposition at that time, nor he me. He told me to come in and see further about it. The next time we talked about it was at his house in Fairfield. I went there to see what I could do about it. He did not then give any reason why he would sell. I don't remember that he ever said why he wanted to sell. I had got an idea that he wanted to go somewhere else. One reason why I thought he wanted to go was because his boy had caused him a good deal of trouble, though he didn't say so to me. I don't know that Fitzgerrel had any property besides what I bought, except it may have been a horse and a cow or two. The reason why I bought his farm was that I had means outside what I wanted to put into business, and I thought it a good plan to put it into land, as at that time we were talking of having that Southeastern R. R. built. A good part of my property at the time I bought of Fitzgerrel was in land. I had about $2,000.00 besides. I have no real estate now, aside from what I bought from Fitzgerrel. I have received from lands

that I have sold; $5,760.00. I have also sold about $1,700.00 personal property; besides I got 6 % interest on my mortgage from Davis.
136 This is customary on purchase-money mortgages. For ordinary loans the rate is from 10 to 15 per cent.

Nothing was said to me at the time Fitzgerrel sold to me about security; nothing was said to me, or to my attorneys, so far as I know, about Fitzgerrel's owing for the goods in the store. I have now in personal property two horses, four cows, eight hogs, worth in all less than $1,000, besides a mortgage & notes from Davis for $3,600.00. The notes are not due now. One is due April next, and one in a year from then.

McCartney has been my attorney since the execution of the deeds from Fitzgerrel to me.

I don't know as I have consulted him in regard to the Fitzgerrel matter since then. I don't know anything about the purchase of my notes from Linsley by McCartney. He never acted as my attorney in purchasing any of my notes after they went into Fitzgerrel's hands.

I don't remember that I ever had any conversation with him or any one else in regard to purchasing any of the notes for me or any
137 other person; I refer to the notes I gave for Fitzgerrel's property.

Examined by M'r Rosette:

When I was served with the last subpœna in this case by young Powell, I told him I was ready to go but wanted my fees. He said M'r Harvey had not given him enough money, but he would try and get M'r Harvey to pay it when I went down. I told him that I had quit doing business in that way, that I had gone down before and paid my own fare. He did not tender me any money.

Cross-examined by M'r Harvey:

When I demanded my fees Powell pulled out his pocket-book and said he had $3.00, but he (Harvey) didn't give me enough money. The fare from my residence to Fairfield (including a return ticket from Flora back to Xenia) is $1.65.

TITUS BUFFINGTON.

138 I, Richmond Wolcott, special commissioner of the district court of the United States for the southern district of Illinois, that the foregoing deposition was taken by me on the 17th day of January, A. D. 1872, and read by me to the deponent, Titus Buffington, before signing, and signed by him in my presence, the said deponent having first been duly sworn by M. B. Converse, U. S. commissioner for the southern district of Illinois.

RICHMOND WOLCOTT,
Special Commissioner.

Fees $5.00, p'd by C. D. Harvey, assignee.

(Endorsed:) Filed January 24, 1873. J. A. Jones, clerk.

139 *Deposition of Barkley & Faith.*

UNITED STATES OF AMERICA,
Southern District of Illinois, ss:

Be it remembered that on this 22d day of January, A. D. 1873, before me, M. B. Converse, a commissioner of the circuit court of the United States, within and for the southern district of Illinois, and duly au-

thorized by the laws of the United States to take and certify depositions to be used in said court by agreement between the parties, came D. W. Barkley and R. T. Faith, witnesses on behalf of the defendant in a certain cause now pending in said court, wherein Charles D. Harvey, assignee of Isaac Fitzgerrel, bankrupt, is complainant, and Titus Buffington is defendant; and the said D. W. Barkley and R. T. Faith, being by me first duly cautioned and sworn, depose and say:

We have been acquainted with M'r Fitzgerrel for at least ten years before the first day of January, A. D. 1868, and during that time, I think, the general impression of the community was that he had property amply sufficient to pay his debts.

Cross-examination:

140 Don't know that we know his financial condition in December, A. D. 1867.

D. W. BARKLEY.
R. T. FAITH.

Subscribed and sworn to before me this 22d day of January, A. D. 1873.

M. B. CONVERSE,
U. S. Commissioner.

Opened at request of J. E. Rosette, January 24, 1873.

J. A. JONES, *Clk.*

Afterwards, to wit, on the third day of February, in the January term of said court of the year last aforesaid, the following further proceedings were had in said court in said cause, and entered of record, to wit:

Decree.

CHARLES D. HARVEY, ASSIGNEE OF THE ESTATE of Isaac Fitzgerrel, a bankrupt, *v.* TITUS BUFFINGTON. } In chancery.

Now, on this day this cause came on to be heard upon bill of complain*ant*, answer, replication, and proofs herein, and was argued
141 by counsel, and thereupon, in consideration thereof, it was ordered, adjudged, and decreed by the court that the conveyances made and delivered on the 30th day of December, A. D. 1867, by the said Isaac Fitzgerrel and Martha Fitzgerrel, his wife, of the following-described land, lying and being in the county of Wayne and State of Illinois, to wit:

The southeast quarter of section nine (9) and the west half of the southwest quarter of section ten, (10,) in town. one (1) south, range eight (8) east, except one-half (½) acre heretofore set apart for a family burying ground; also, a strip of forty (40) acres off the south side of the whole strip heretofore conveyed to James A. McLin; also, the undivided one-half (½) of the northeast quarter, southwest quarter, and the northwest quarter of the southeast quarter of section twenty-two, (22,) town. one (1) north, range six (6) east; also, the northeast quarter of the northeast quarter of section four, (4,) town. two (2) south, range eight (8) east; also, the north one-half (½) of the southeast quarter of section thirty-three, (33,) town. one (1) south, range eight (8) east of the 3d P. M.; also, lot

nineteen (19) in the original town. of Fairfield; also, lot number
142 seventeen (17) in the original town. of Fairfield; also, lots number two (2) and three (3) in Barnhill's addition to the said town. of Fairfield; also, a tract of land described as follows: Beginning on the dividing line between the northeast and the northwest quarters of section six, (6,) in town. two (2) south, range eight (8) east, at a small cherry-tree twenty-eight and one-half (28½) rods south from the northwest corner of lot number eight, (8,) in the town. of Fairfield; thence running due east until it intersects the first small ravine; thence down said ravine to the middle of Johnson's Creek; thence down said creek until it reaches the mouth of the second branch that empties into Johnson's Creek, on the north side; thence north with said branch to the north line of the northeast quarter of section six, (6,) town. two (2) south, range eight (8) east; thence with said line to the northwest corner of said quarter section; thence south to the place of beginning, excepting one acre and one-quarter acre now used as a cemetery; also, excepting five (5) acres heretofore sold to the agricultural society for a fair-ground; also, ex-
143 cepting two acres heretofore sold to James P. Ardery, to the said defendant, Titus Buffington; which conveyances were recorded in Book V of the recorder of deeds in Wayne County, Illinois, be set aside, vacated, and annuled, except as to a tract of about three-fourths of an acre heretofore sold by the said defendant, and that the defendant deliver up and surrender possession of said lands to the complainant, or his duly-authorized agent; and it is further ordered, adjudged, and decreed that the complainant have and recover from the defendant, and that the defendant pay to the complainant, the sum of three thousand eight hundred and ninety-one dollars and eighty-eight cents. It is further ordered, adjudged, and decreed that the complainant recover of the defendant the costs in this suit, to be taxed, and that he have execution as upon a judgment at law therefor, as also for the said sum of three thousand eight hundred and ninety-one dollars and eighty-eight cents.

144 And afterwards, to wit, on the 4th day of said Feb'y, in the term and year last aforesaid, the following further proceedings were had in said court in said cause, and entered of record, to wit:

Order for execution.

CHARLES D. HARVEY, ASSIGNEE of Isaac Fitzgerrel, *v.* TITUS BUFFINGTON. } In chancery.

On motion of complainant, and on affidavit filed, execution is ordered to issue herein instanter.

Then afterwards, to wit, on the 20th day of said February, in the year last aforesaid, came again said defendant, by John E. Rosette, esq., his solicitor, and filed in the clerk's office of said court his petition for rehearing of this cause; which said petition is in the words and figures following, to wit:

145 *Petition for rehearing.*

UNITED STATES OF AMERICA,
Southern District of Illinois:

In the circuit court of said southern district.

To the honorable Samuel H. Treat, judge of the circuit & district court for and within the said district and circuit:

Your petitioner, Titus Buffington, would most respectfully represent unto your honor that on the 20th day of March, A. D. 1872, one Charles D. Harvey, as assignee in bankruptcy of one Isaac Fitzgerrel, filed his bill in chancery in this honorable court, and that such proceedings were had in the said cause as that on the 3' day of Feb'y, 1873, you rendered a decree in the said cause against your petitioner; reference being had to said bill, answer, exhibits, and proceeding in said cause for more particular description of dates & times of filing said papers and making the appointment of the assignees in said case.

Petitioner further states a petition asking to declare said Isaac Fitzgerrel a bankrupt was filed on the 18th day April, 1868; that he was adjudged a bankrupt on the 3' day of Feb'y, 1868.

146 That on 8th day of March, A. D. 1869, one Urich Spring was appointed assignee of the said Fitzgerrel; that on the 22' day of Aug'st, 1871, and more than two years after the appointment of the said Spring, the plaintiff, Charles D. Harvey, was appointed assignee in place of Spring, requested or demanded that on the 20th day of March, A. D. 1872, and more than four years after the original petition to declare the said Fitzgerrel a bankrupt had been filed in the said cause, the said bill in chancery was filed herein by the said Charles D. Harvey, to set aside a conveyance that was charged and proved to have been made by the said Fitzgerrel to the petitioner on the 31' day of December, A. D. 1867.

Your petitioner charges that he is much aggrieved by the decretal order in this cause made on the *on the* 3' day of Feb'y, A. D. 1873, now last past, and during the term of court now in *in* session, whereby it was, amongst other things *other things*, decreed that the deed made and executed to this petitioner on the 31st day of December, 1867, be set aside, and that your petitioner shall pay the sum of 3,981.86.

Your petitioner represents that under the bankrupt act so much
147 time had elapsed since the making of the original deed as to bar any right that the assignee could *of* had under the said law to set aside said conveyance; that your petitioner much aggrieved by the said decree, and submits that the same is erroneous, because of the fact that the said assignee had no right, and under the said law could not sustain the said bill or decree upon the facts and statements set and approved. He further submits that the same is erroneous in not receiving the answer to said bill as a full and explicit defence to the said cause; and he further submits that the decree is erroneous in not dismissing the said bill in the said cause.

Wherefore your petitioner prays that your honor will grant him a rehearing in the said cause, pursuant to the rules of this court; and your petitioner shall ever pray.

JOHN E. ROSETTE,
His Solicitor.

(Endorsed:) Filed February 20th, 1873. J. A. Jones, clerk.

148 Then afterwards, to wit, on the first day of March, in the January term of said court, of the year last aforesaid, the following further proceedings were had in said court in said cause, and entered of record, to wit:

Order overruling motion for rehearing.

CHARLES D. HARVEY, ASSIGNEE, } In chancery.
v.
TITUS BUFFINGTON. }

This day this cause came on to be heard, upon the motion of defendant for a rehearing of this cause; and the court, having heard argument of counsel, and being sufficiently advised in the premises, overrules said motion.

Now afterwards, to wit, on the sixteenth day of October, in the October adjourned term of said court, in the year last aforesaid, the following further proceedings were had in said court in said cause, and entered of record, to wit:

Leave to file bill of review.

CHARLES D. HARVEY, ASSIGNEE, &C., } In chancery.
v.
TITUS BUFFINGTON. }

On motion of defendant, by Mess'rs John E. Rosette & Brother, his solicitors, leave is granted to file a bill of review herein; which is accordingly done.

149 *Bill of review.*

Circuit court of the United States for the southern district of Illinois, in the seventh circuit.

To the judge of the circuit court of the United States for the southern district of Illinois, in the seventh circuit:

Your orator, Titus Buffington, humbly complaining, showeth unto your honor that on the 20th day of March, in the year A. D. 1872, one Charles D. Harvey, assignee in bankruptcy of Isaac Fitzgerrel, exhibited his bill of complaint into this honorable court against your orator, and thereby set forth that Titus Buffington, of Xenia, a citizen of the State of Illinois, in said district, and complaining says that the said Harvey is the assignee of the estate and effects of Isaac Fitzgerrel, a bankrupt, according to the force, form, and effect of the statutes concerning bankrupts, and was thereby appointed such assignee by Lawrence Weldon, one of the registers in bankruptcy for said southern district of Illinois, on the day of , A. D. 1871, in a proceeding in involuntary bankruptcy, commenced by the creditors of Isaac Fitzgerrel, and on the day of , A. D. 187 , did receive from the said Weldon, as such register, an assignment of all the estate, real and personal, of the said bankrupt; which said deed was
150 duly issued by said register of said district court; that said Isaac Fitzgerrel, before he became a bankrupt, that is to say, on or about the 30th day of December, A. D. 1867, was the owner of the fol-

lowing-described real and personal property in the county of Wayne and State of Illinois, in said district. (See original bill.) Also, a stock of goods valued at or about $2,500, a lot of cattle, horses and mules, the number and value of which is unknown to your orator; that thereafter, on the same day and year, your orator is informed and believes the said Isaac Fitzgerrel, in contemplation of insolvency, combining and confederating with the defendant and J. H. McCartney to put his property out of his hands so as to hinder and delay his creditors and defeat the operation of the bankrupt law, now in force, did, with Martha Fitzgerrel, his wife, execute and deliver to one Titus Buffington, the defendant herein, who was a friend and neighbor of the said Fitzgerrel, a conveyance of all the above-described real estate for a pretended consideration of $7,950, when said lands are in fact worth a much larger sum of money; and that said Isaac Fitzgerrel did also at the same time make a pretended sale to the said Titus Buffington of the above-described personal property; which said sale comprised all the estate, both real and personal, of the said Isaac Fitzgerrel which was liable to
151 creditors on execution. That no bona-fide consideration was ever paid by the said Buffington on said sales, or either of them; but that it is pretended by the said Buffington that in payment for said property he executed and delivered to the said Fitzgerrel his promissory notes, bearing six per cent. interest, and payable as follows, that is to say, a certain of said notes were to be paid each year, commencing about the 1st of January, 1869, for the first payment, and the last to be made in 1874. That no security was given to secure the payment of the several sums of money mentioned in said notes, all of which your orator believes to be false. Your orator further shows unto your honor that since the pretended conveyance of said lands was executed, said Fitzgerrel has occupied and is now in possession of all of said lands, and has had full control of the same, and has been occupying or renting to tenants all of said lands, with the buildings thereon, and has collected from said tenants all the rents therefor, and has paid taxes, paid off incumbrances and insurance, and made improvements on said premises, the same as if he were the owner in fee, and has never accounted to said Buffington or to any one for the rents so collected from said tenants, nor has he, the said Fitzgerrel, paid any rent for the use of the said
152 premises which he used and occupied since said conveyance before described.

Your orator further shows that there has never been any contract, stipulation, or agreement for any definate rent; nor has there been any definite rent, nor has there been any settlement or accounting between the said Fitzgerrel and the said Buffington for said premises so occupied and rented, as above described, from said 30th day of December, 1867, to January 1st, 1872.

And your orator further shows unto your honor that no delivery of the personal property was ever made under and by virtue of said pretended sale, but that said personal property above described and included in said sale was left under the control and in the possession of the said vendor, who afterwards, as before said purchase, used, sold, and disposed of the same for his own benefit, and has never paid to, accounted for, nor been called upon to account for the same by the said Buffington, his agent, or attorney, although all of said property, with the knowledge of said Buffington, has long since been disposed of.

And your orator shows unto your honor that he is informed and believes that said Isaac Fitzgerrel, if he ever did receive from said
153 Buffington the note above described, did afterwards surrender the

same to said Buffington, his agent or attorney, by the hands of the said J. H. McCartney, who was his att'y in making said conveyance, and others to your orator unknown; that said notes have never been paid by said Buffington, nor have they been presented for payment, although several thousand dollars, with interest thereon, has long since become due, and which is now unpaid.

And your orator further shows unto your honor that since the above pretended sale and conveyance, the said Buffington has disposed of all his real estate and personal property which he held at the time of said conveyance, and at the present time has about $3,600.00 worth of notes due himself from Joshua Davis, and less than a thousand dollars' worth of personal property; which said property, your orator is informed, is all the assets of the said Buffington, aside from the real estate received from the said Fitzgerrel, and above described, a part of which, your orator is informed, has been sold by said Buffington; that there is now due from said Buffington, as represented by said notes, between twelve and fifteen thousand dollars, as your orator believes; and that the principal and interest due upon the notes of $3,600, with the personal property
last above described, is insufficient to pay your orator for the
154 personal property above included in said pretended sale to said
Buffington, and for the payment of the rent on said real estate during the period he has pretended to own the same. Your orator charges that the pretended conveyance from the said Fitzgerrel to the said defendant *were* not in the usual and ordinary course of the business of the said Fitzgerrel or the said defendant, and was a fraud upon the provisions of an act of Congress entitled "An act to establish a uniform system of bankruptcy," approved March, 1867, and the amendments thereto; that the said defendant, combining and confederating with said Fitzgerrel, did accept said conveyance and the pretended transfer of the said personal property, intending thereby to hinder the creditors of the said Fitzgerrel from collecting their debts, and to defraud the operation of the bankrupt law. To the end, therefore, that the said defendant, if he can show why your orator should not have the relief hereby prayed, and may, upon his corporal oath, and according to the best and uttermost of his knowledge, remembrance, and belief, information, full, true, direct, and perfect answer make to all and singular the matters hereinbefore stated and charged, as fully as if the same were hereinafter
repeated, and that the conveyance above referred to may be set
155 aside as null and void, and said property become assets of the
said bankrupt's estate, and that said defendant may be required to give a fair and just value of said personal property and for the use of the same, upon a fair accounting, and may be restrained from disposing of the property above described for the purpose of defeating the object and intention of this bill, and for such other and further relief in the premises as the nature of the case shall require and to your honor seem meet; and may it please your honor to grant unto your orator the writ of injunction issuing out and under the seal of this honorable court, or issued by one of your honor', according to the statute in such case made and provided, directed to the said Titus Buffington, his agents or attorneys, commanding, enjoining, and restraining them, and each of them, from selling, transferring, or disposing of the real estate above described; also, from collecting, transferring, or in any way disposing of said note due him from the said Joshua Davis, until the further order of this honorable court; and may it please your honor also to grant unto your orator a writ of subpœna of the United States of America, issuing out of and under the seal of this honorable court, directed to

156 said Titus Buffington, defendant, commanding him on a certain day therein to be named, and under a certain penalty therein to be made, to appear in this honorable court, then and there to answer all and singular, and to stand, perform, and abide such further order, direction, and decree as may be made against him; and your orator, as in duty bound, will ever pray.

CHARLES D. HARVEY.

And your orator, being served with process on the 26th day of March, A. D. 1872, for that purpose appeared and put in his answer to the said bill on the 10th day of June, A. D. 1872, to which answer exceptions were filed by the said plaintiff on the 27th day of June, A. D. 1872, which said exceptions were sustained by the court on the 27th day of June, A. D. 1872, and defendant had leave to file an amended answer, and which said amended answer was filed on the 25th day of November, A. D. 1872, and to which amended answer exceptions were again filed on the 2d day of December, 1872, and the said defendant had leave to file another amended answer, which said amended answer was filed on the 11th day of December, A. D. 1872, to which said amended answer exceptions were again filed and the exceptions thereto overruled by
157 the court; and which amended answer last filed is as follows, to wit:

UNITED STATES OF AMERICA:

Circuit court of the United States of America for and within the southern district of Illinois. In the circuit court.

And now comes the said Titus Buffington, the defendant, to a bill of complaint exhibited against him, the said Titus Buffington, by Charles D. Harvey, assignee of Isaac Fitzgerrel, for answer to the said bill of complaint, or so much thereof as he is advised it is material or necessary for him to answer, saving to himself any and all manner of benefit or exception, or otherwise, that can or may be taken or had to the many uncertainties and imperfections in the said bill contained, for answer, answering says that he is informed and believes that the said plaintiff hath been appointed assignee of Isaac Fitzgerrel as in said bill stated; further answering, says that on the 30th day of December, A. D. 1867, the said Fitzgerrel was the owner in fee-simple of the lots and land set up in the petition, and he believes the same are correctly and properly described therein. Further answering, says that true it is he did purchase from the said Fitzgerrel the land and lots as mentioned
158 and described in the said bill on the 30th day of December, A. D. 1867; that said purchase was made in good faith, and with no intention to hinder, delay, or otherwise put the creditors of the said Fitzgerrel to any trouble; that, so far as this respondent knew, the said Fitzgerrel did not have any creditors, and was, so far as this respondent was informed, in good standing, and entirely out of debt; that if he owed any sum or sums of money to any person or persons, this respondent was not informed of that fact, and had no reason to suppose the fact to exist; that he was then in good standing and good credit, and was supposed to be perfectly solvent, and in fact not in debt to any person or persons, or firm, so as this respondent was informed and believes. This respondent did agree to give for the said estate its full value, to wit, the sum of seven thousand nine hundred and fifty dollars; that he paid down the sum of fifty dollars; that on the said day of purchase he executed his several promissory notes for the balance due on the said land, and

that the said notes were payable to the said Fitzgerald or his order, and are described as follows, to wit: All dated Dec. 30th, 1867, one
159 for $350.00, one for $550.00, one for $600.00; all due January 1st, 1869, and drawing six per cent. interest from date. One for $950.00, and one for $950.00, due January 1st, 1870, at six per cent. interest from date. One for $950.00, and one for $950.00, due in January, 1872. One for $950.00, and one for $950.00, each due Jan. 1st, 1873, and one for four hundred and eighty dollars, due Jan. 1st, 1874; all payable to said Fitzgerrel or order, and delivered to him, and bearing six per cent. interest from date until paid.

This respondent, further answering, says there was included in said notes above described the sum of six hundred and thirty dollars, which said last note was agreed to be paid for the live stock purchased by this respondent from the said Fitzgerrel at the same time he purchased the said real estate, and the stock was on the farm, and included therein four head of cattle, two young mules, and three horses; that the amount of six hundred dollars was a fair and reasonable consideration for said stock, and all it was worth at that time; that said notes above described were given in full satisfaction for the said property purchased by this
160 respondent from the said Fitzgerrel, and also for the stock purchased from him, the said Fitzgerrel; that said purchase of land and stock were both made on the 30th day of December, A. D. 1867; that he gave no other notes, nor agreed to pay any other sum or sums, for said land or live stock, and owes nothing for the same, only what is still due on the said notes so given by him as aforesaid and described herein.

Respondent, further answering, says that the note for three hundred and fifty dollars, due Jan. 1st, 1869, was paid by this respondent in full, and the amount was received by one Farris, to whom the said note had been transferred by the said Fitzgerrel before the same was due; that said payment was made at different times, the full amount being paid in July, 1872; that said note for five hundred and fifty dollars, due Jan'y 1st, 1869, has been paid in full by this respondent to the said Farris, and that payment was made in several payments, the full amount being paid in full in July, A. D. 1872; that said note had been transferred by endorsments to the said Farris, from whom he received the said note, and that said note was endorsed and delivered to Farris by him, Fitzgerrel; that said note for six hundred dollars, due Jan. 1st,
161 1869, was transferred by said Fitzgerrel to George Scott, and that Scott brought suit on the same against this affiant in the circuit court of Wayne County, Illinois, and obtained judgment on said note for the amount due on the same, and this affiant paid said judgment in full in the winter of 1871, and the same is receipted on the docket of said court; that the notes due in Jan., 1870, for nine hundred & fifty dollars each are both paid in full, and that said notes are now in the possession of this respondent; that said notes were endorsod to the said Farris before they became due, and this respondent paid to said Farris, through his agent, the full amount due on the same, and that said payments were made at different times, the last being paid in July, 1872, and the notes were delivered up to this respondent.

Respondent further says that the above are all of the notes given this respondent for the purposes aforesaid upon which payments have been made in full; that the balance of said notes are now unpaid, and some of them due and still unpaid. That respondent, further answering, says that, so far as he is now informed and knows, the said notes are all transferred by indorsement by the said Fitzgerrel,
162 and are now at this time held, so far as this respondent is in-

formed, by the persons following, to wit: Thomas Cooper, Uran Farris, & one W'm Lindsay; that said parties hold the balance of the said original notes, so far as this affiant is informed and believes; that this respondent paid all of the said amounts so paid by him on said notes in good faith and under the belief that he was the lawful and rightful purchaser of said land and stock so purchased by him. That this respondent, further answering, says that he was not required to give any security on said notes given for the purchase of said lands, from the fact that the said notes w*as* so drawn that they were a lien upon the land sold, it being recited in each note on what particular land said note was given for.

Respondent, further answering, says that true it is he did on the 31st day of December, A. D. 1867, purchase from the said Fitzgerrel his stock of goods & merchandise, consisting of such goods as are generally kept in a country store; that he agreed to pay for the said stock of goods about the sum of $2,500, and took an invoice of the same, which said invoice was taken from this respondent by the said Harvey, assignee of said Fitzgerrel; and this respondent therefore can-
163 not give a full and complete description of the said goods & merchandise on that account; that he took an inventory and valued the goods at what they were worth at that time, and gave his notes for the amount due, as follows: that is to say, one note for $540, due on the 1st day of Jan., 1873, drawing six per cent. interest from date, and payable to said Fitzgerrel or order; two notes for $980, each dated Dec. 31st, 1867, and payable to said Fitzgerrel or order Jan. 1st, 1874.

Respondent, further answering, says that he does not know at this time, nor has he ever known, who has or owns the three notes last aforesaid; that they never have been presented to him for payment, nor has any person ever notified him that they owned said notes.

Respondent, further answering, says that immediately on purchasing the said goods he entered into the possession of the said stock of goods and store-house, employed a clerk, and carried on the retail business of selling said goods the same as any other country merchant; that he so sold the said goods until the 18th day of April, 1868, when he was enjoined from selling the said stock of goods by the order of this honorable court, upon the application of Henry Bell & Sons, who filed their petition in bankruptcy in the said court, asking that said Fitzgerrel should be declared a bankrupt under the laws of the United States, and asking that your honor would enjoin this respondent from the sale
164 of the goods as purchased from the said Fitzgerrel, including the real estate, as well as all personal property so as aforesaid purchased.

Respondent, further answering, says that such proceedings were had on the petition for injunction at the June term of the said district court aforesaid held in the year A. D. 1868 that the injunction was dissolved and the goods ordered returned into the custody of this respondent. Respondent then made up his mind that he would not go into the business of selling merchandise, and sold the stock of goods to purchasers after the dissolution of said injunction, as he lawfully might do under the said order dissolving said injunction. Respondent submits that this cause was fully heard upon evidence then heard at the June term aforesaid, and disposed of by the order of this honorable court, and that no appeal nor writ of error has ever been taken from the said order or decree, and it remains in full force and effect, and is a bar to any further prosecution or proceeding in this cause.

Respondent, further answering, says that in the year A. D. 1868 he

rented the said land, or 41½ acres of the same, to the said Fitzgerrel, and was to and did receive one-third of the crop raised on said 41½ acres, amounting in value to about the sum of forty dollars, as near as this respondent can now recollect. That he also rented lots number' 19 and 17 in the town of Fairfield to said Fitzgerrel, for which he agreed
165 to pay the sum of ten dollars per month, about what the same was worth, a good, fair rent for the same. That the renting was for the year A. D. 1868. Further answering, says that for the year A. D. 1869, he also rented the farm in the country to said Isaac Fitzgerrel and received payment for the same for the rent one-half of the crop raised on the land, this respondent to furnish the hands to do the work, which said one-half was worth, in cash, about the sum of $. Further answering, says that for the year 1870, 1871, and 1872, he rented the said Fitzgerrel and others the land, and received for the same one-third of the crops for each of said years; that said one-third was worth in actual cash about the sum of one hundred and fifty dollars for each of said years, as near as this respondent can now arrive at the same; that for said lots 17 & 19 he received for the said years aforesaid for the same the sum of was actually received.

Respondent, further answering, says that he paid taxes for the land for the years A. D. 1868,'69,'70, and 1872, and that said taxes paid either by himself or his agent amounted, as near as this respondent can now answer, not having the receipts before him, to about the sum of eighty dollars per year, making in all about two hundred and forty dollars
166 taxes paid by this respondent on said lots and land. Respondent, further answering, says that at the time he purchased said land there was a mortgage due on the same and a lien on the land; that said mortgage was given by the said Fitzgerrel to Charles Wood, and not paid; that on the said mortgage there was due about the sum of one thousand dollars, which was a lien on the said land, six hundred dollars of which was paid with this respondent's money by his direction and under his authority; that such sum was justly and honestly due, and had been for some time, and had to be paid in order that this respondent might remove the said lien on the said land; said payment was made by this respondent after he had received the deeds from the said Fitzgerrel, and there is still due on the said mortgage about four hundred dollars.

Respondent, further answering, says that he paid out nothing for insurance on the said lots or the buildings on the same. That he deemed it better, or just as well, to take his own risks in the matter, as insurance was a thing in which he had no confidence, or at least a very little, and for that reason he did not insure the same. Fitzgerrel had no insurable interest, and this respondent does not know whether he made any insurance. If he did, he done so at his own risk, with-
167 out the authority of this respondent.

Respondent, further answering, says that he has not sold or incumbered any of the real-estate so purchased by this respondent, except about ¾ of an acre, which he sold for dollars, and that he now owns and holds the same, and accruing rent for the same, as he lawfully has a good right to do. That the rents he has received from the said Fitzgerrel was the same that any other person could have rented the land for, and such price as was generally considered a good rent in the neighborhood where the land was situated. That said Fitzgerrel accounted to the respondent, and made his settlement for rents, and either sold the share of this respondent's crops for cash, or delivered it to this respondent, as he directed him to do; that the amount received was about as above stated,

and that it was but little over what would annually pay the taxes due on the said land, and not, in fact, sufficient to pay for taxes and improvements such as ought to have been made on the said land.

Respondent says that the said Fitzgerrel never had any control over the personal property after the sale to this respondent; that he took immediate possession of the same, and it was under his own absolute control, and all the control the said Fitzgerrel had over the same
168 was as the agent and under the direction of this respondent; that if the said Fitzgerrel ever pretended to exercise any other or further control than as above stated, he did it of his own wrong and not with the consent of this affiant.

That he never had any control of the real estate, only as the agent or tenant of this respondent, and never pretended to have any interest in or to the same, so far as this respondent is informed and believes. Respondent further states that said Fitzgerrel rented some of the lands for the benefit of this respondent and as his agent, and that he received from said parties to whom he rented about the sum of $, all of which he accounted for to this respondent; any pretence of any of the rent received by him and paid to this respondent, or under his direction—that the allegations in said petition showing or charging a different state of facts are not true in any respect whatever. Respondent further says that he has caused the land to be improved in a substantial manner, and that the value of said improvements caused to be made are worth the sum of two hundred dollars, and consisted in clearing, fences, and building and repairs that were necessary and important on the said place. That he caused the building on lot 19 to be
169 repaired, by roofing the building on the same, worth about one hundred dollars, and some other repairs and improvements on the said lot.

Respondent, further answering, says that at the time this respondent purchased said property, both personal and real, to wit, about eighty acres of land, worth about one thousand dollars, he also had personal property, but what amount this respondent cannot tell. That the personal property was scheduled, and came into the hands of his assignee, as this respondent is informed and believes.

Respondent, further answering, says that said contract and purchase made by this respondent of both the personal and real estate was in good faith, for which he paid a good and full consideration; that he did not know, nor had no reason to know, that said Fitzgerrel was insolvent or in any manner indebted to any person or persons in any sum or sums whatever. That all of the allegations of the said bill charging this respondent with notice in the matter are false and not true. This respondent expressly denies that he, at any time, combined, confederated, agreed to or with the said Isaac Fitzgerrel to hinder or delay his creditors, or in any manner attempted to defraud the creditors of the said Fitzgerrel. And having fully answered all the material allega-
169 tions in the said bill, he prays to be hence dismissed.

And the said Charles D. Harvey, having replied to the said answer, and issue being joined thereon, and witnesses examined, and the proofs closed, the said cause was set down to be heard before your honor on the 3d day of January, A. D. 1873, when a decree was pronounced, which was afterwards passed and entered, in which it is set forth and recited that it was, on the hearing on your orator's behalf, asserted, and by his answer set forth to your honor, that there was no cause of action against him, nor was there any authority for the court to enter a decree for the amount of personal property with which your

orator was charged in the said bill. That it was shown by the answer and admitted by the bill that the personal property had been sold by your orator and converted to his own use more than four years before the suit was commenced against your orator, and by leave of the court, under its decree of July, 1868, dissolving said injunction, as specified in the answer and set up in the same. And there are many and manifest errors set and stated in said decree, to all of which your orator objected, and it also appears by the said decree that his conveyance
171 is set aside, when it manifestly appears in the bill and papers filed that other parties ought to have been made to the said bill, and other errors hereinafter pointed out, to all of which the said respondent objected, and the said decree heretofore, to wit, on the 3d of Feb'y aforesaid, has been duly signed and enrolled, which said decree your orator insists is erroneous and ought to be removed, reversed, and set aside, for many apparent errors and imperfections, inasmuch as by your orator's answer set forth in the said decree. It is decreed that the deed made by Isaac Fitzgerrel and Martha his wife to Titus Buffington, on the 30th day of December, A. D. 1867, be set aside where it is shown by the record that neither Isaac Fitzgerrel nor his wife Martha are either of them made parties to the said bill filed herein, nor did either of them enter their appearance to the said suit, nor were they in court when it was the duty of said complainant to make both of them parties to said suit. It also appears that there is a decree against the said defendant for the sum of three thousand eight hundred and ninety-one dollars and eighty-eight cents and costs of suit, when it is apparent in the answer and not denied that defendant took actual posses-
172 sion of the goods described in the said bill by the decree of this court rendered on the 13th day of July, A. D. 1868, and the injunction dismissed as to the said goods.

The decree of the court is manifestly wrong in not making some provision to pay the said Buffington the six hundred dollars which he paid to release in part the one-thousand-dollar mortgage which was a lien on the land sold to Buffington at the time of his purchase, and for a long time before, all of which appears in the record herein. It is manifestly wrong in not making some provision in relation to the said funds paid on said lien, as it appears by the record that the said funds was paid and applied as a credit on said mortgage with the money of the said Buffington. The decree is further manifestly wrong in not making some provision to secure the said Buffington for the payment of the said note for three hundred and fifty dollars, due Jan'y 1st, 1869, which was paid by the said Buffington to a person to whom it had been endorsed before it was due; also in not making provision to secure said Buffington in the payment of the note for five hundred and fifty dollars, due Jan'y 1st, 1869, which said note was paid in full by the said
173 Buffington to a person to whom it was endorsed before it was due, on which said sum was paid in July, 1872; also in not making some provision for the payment of six hundred dollars, note due on the 1st day of January, 1869, which was paid by the said Buffington after judgment was obtained against him in the Wayne County court, Ill's, by George Scott, to whom said note was transferred; also in not making provision for the payment of the two notes for nine hundred and fifty dollars each, both of which notes were paid in full by the said Buffington about July, 1872, all of which payments were made in good faith, and all of which are shown by the answer and not denied or questioned by any evidence whatever. The decree of said court does not in any way or manner refer to or dispose of the said payments, either op

posing or denying the same in any manner whatever, the decree not even referring to these facts and making no provission, and not finding that they were not paid, or in finding that the same was fraudulent or in any manner disposing of the same. There is also manifest error, as appears from the papers and record in this cause, in rendering a decree against the said defendant for the said sum of three thousand
174 eight hundred and ninety-one dollars and eighty-eight cents, which must have been done on the ground that said defendant was liable for the personal property which he purchased from the said Fitzgerrel, which was manifest error, as there was not any proof that the personal property was worth that amount, and there was a good and adequate remedy at law for the said plaintiff at law; and no decree ought to have been rendered against him for that or any other amount. There is also manifest error in the decree, for the reason that the court erred in entering a decree for the setting aside the deed in the said bill, answer, and decree mentioned, as all the papers in said cause show that said deed was made on the 30th day of December, A. D. 1867, and passed into the hands of the said Buffington on that day, and remained in his hands up to the date of the said decree; and no evidence was offered to show that said Harvey did not know the existence of said deed; and that the evidence further shows that the said Buffington was not a creditor of the said Fitzgerrel, but was a bona fide purchaser of both the real and personal estate of said Fitzgerrel, and there is no proof that there was any collusion between the parties. All this appears from the records of the said cause in bill, answer, evidence, and
175 decree of the court. The bill shows that Fitzgerrel was a resident and lived upon said lots, and that it was his homestead, which by law is exempt from sale on execution or otherwise; and the decree conveys the lots.

Your orator would further represent unto your honor that the following is the testimony introduced upon the trial of this cause, and is in substance as follows, to wit:

176 TITUS BUFFINGTON called, sworn as a witness for the complainant, and testified as follows, to wit:

I do not remember which of the notes mentioned in my answer were given for the stock. I do not know whether I gave more than one note for the live stock or not. My opinion is that I gave a note for the live stock. It was the six-hundred-dollar note that was assigned to Scott. I do not remember which of the notes was assigned to Cooper. It was one that was not due. I was subpœnaed to bring with me the notes mentioned in my answer, and which I then answered that I had in my possession. The reason that I did not bring them was that I have not got them. I suppose that they were destroyed. I do not know who destroyed them or when they were destroyed. The last I saw of the notes was when M'r R. D. S. Filson gave them up to me when they were paid off. The balance due on the notes was paid to M'r Filson. M'r Filson was my attorney at that time and he drew the first two answers in this case. I think that it was in July, 1872, that I paid the amount to R. D. S. Filson. I do not remember the amount I paid to said Filson. There were some credits on the notes and some interest due.
177 I don't think that I can approximate the amount I paid R. D. S. Filson previous to July, 1872. I paid the six-hundred-dollar note held by Scott. I made partial payments on that note, the last payment being about one hundred and fifty dollars. Some of these payments I made to Scott personally. I gave M'r Fitzgerrel the sum of one

hundred dollars and told him to pay it on the note held by Scott. I think M'r Fitzgerrel never made any payments on that note without my order. I think that Robinson & Boggs' attorney paid some money realized from my castor-beans on said note.

Question. State what payments were made upon these notes, or any of them, by yourself previous to July, 1872. State the time of each payment, the amount of each payment, and to whom payment was made, and upon which notes.

Answer. I can't state the amounts nor when paid, being three or four years ago; there were payments made, but I can't state upon which notes. I paid some money to Fitzgerrel. I think I did not pay any money to anybody except Fitzgerrel and Scott previous to July, A. D. 1872. I do not think I paid any money to Fitzgerrel before the
178 notes became due.

Question. Did each note given for the land contain a description of the land for which it was given?

Answer. To the best of my knowledge, I think they did. I think that the two notes given in 1870 for nine hundred and fifty dollars each were given for lot number nineteen; I do not remember particularly about the others. The two notes given for said lot nineteen were the two that were destroyed. The notes were drawn by M'r J. H. McCartney, of Fairfield. There were two men on the two-hundred-acre farm that I bought of Fitzgerrel the first year after I purchased it. I think there were two men on the farm the first year; that is my recollection now. Jerry Rusher is the name of one of the men and John Fitzgerrel the other. The latter is a son of Isaac Fitzgerrel. Rusher remained on the farm from March, 1868, to March, 1869. Rusher here referred to is not a relative of Isaac Fitzgerrel. I think that John Fitzgerrel was on the farm from the year Rusher was. They were tenants on the farm. There was an agreement between them and me that they were to
179 give me the customary share of the crop. I did not make any personal contract with said Rusher and said John Fitzgerrel. I think the contract was made through an agent that year. Isaac Fitzgerrel was that agent. There was at that time about 80 acres under cultivation of that farm. Said Rusher and said John Fitzgerrel had all of the 80 acres. Of the 41½ acres near town there was about 35 or 40 acres under cultivation. I cannot state what amount of grain was raised upon these lands during the years 1868, 1869, 1870, 1871, and 1872. I have now no means of ascertaining the amount. I never kept any account of the amount raised. As the crop matured they divided it, as it was gathered and brought in, putting my share in the cribs and garners. It is my understanding that my part of the crop for each year was kept separate. I do not know that it was kept separate. I have not seen my part of the crop separate from the other part. M'r Fitzgerrel did not give me any report of the amount of grain raised each year. In the summer of 1869 I sold some of the castor-beans that we raised on the place, and hauled them to Clay City. I do not remember about making any other sales; I mean sales of grain. I have
180 some of the tax-receipts which I was required to produce here. I have but one. I think I gave Fitzgerrel money to pay the taxes for the year 1870, as per Exhibit A, hereto attached. I think I gave him some, but do not know just the amount. I do not remember of giving him money any other year for the payment of taxes. I did not pay any six hundred dollars on the mortgage. I can't tell when I gave M'r Fitzgerrel direction to pay six hundred dollars on the incumbrance spoken of in my answer. It was paid by M'r Fitzgerrel, but I don't remember

when. I can't tell when or where M'r Fitzgerrel got the money to pay said $600. I never gave him the money to pay it; he got it from the rents, &c., which he received from the parties to whom he rented the land. I do not know what year he got the money.

Question. Do you know of your own knowledge that he received this $600 from the rents of the farm?

Answer. I did not see the money paid to him.

Question. How do you know that it was your money that paid the $600?

Answer. He told me so, I suppose. I do not remember when
181 he told me so or where I was when he told me so. I will not swear positively that he told me so previous to the 1st of January, 1872, or at any other time; since I purchased the farm there has been 80 acres of ground cleared. It was worth about $8.00 per acre to clear it. The timber cleared off it was worth nothing. I was on the piece cleared before it was cleared, and was also on it about one year ago. The clearing I think was made in the spring of 1869, and the crop was raised in the summer of 1869 on said 8 acres, this 8 acres in addition to the 80 acres. He also fenced the said 8 acres, to do which was worth about $24.00; I should say about $30. He put a kitchen and porch to the house. The kitchen was built in 1869 or 1870, and the porch at the back part of the house was built at the same time. I do not remember the cost of it, but I suppose they cost about $75. The kitchen was built of logs and was covered with boards. He made and put on the 80 acres first spoken of between three and four thousand rails. The rails were worth about $3.00 per hundred. The rails were used partly to build new fence and partly to repair the old fence. I think that was all the repairs put on
182 the 200-acre farm. On the 41½-acre farm he made some new rails to repair the old fences. I do not know how many rails were used in repairing the fence on this farm. I do not know of my own knowledge how many rails were used on these two farms; I only know from what Mr. Fitzgerrel told me. The dwelling-house in town on lot No. 19 was covered with shingles; cost of covering the house as reported to me by my agent, Mr. Fitzgerrel, was about $75.00. He put a new portico to the house. This was built in 1872, and cost about $50.00, as was reported to me by my agent aforesaid. He bored the well about 10 feet, which was worth about $5.00. I do not remember any more improvements. I cannot give the dates when the accounting between me and my agent, Mr. Fitzgerrel, took place. I can't at this time give the result of such accountings. He did not account regularly at the end of each year. I kept no memorandum of these accountings whatever. My part of the grain that was in the cribs before spoken of was fed to a part of the stock that was bought of Fitzgerrel and left on the Fitzgerrel farm. The cattle that I bought of Fitzgerrel I think
183 was sold in the fall of 1869. The cattle remained on the farm from the time I bought them until I sold them, and were cared for by the men on the farm. M'r Fitzgerrel was my agent looking after these cattle; Rusher and John Fitzgerrel were the tenants who took care of the cattle the first year. I cannot tell what Rusher & John Fitzgerrel did with the cattle or what control they had of them. I never took these cattle off the farm from the time I bought of M'r Fitzgerrel; after I bought them he was agent looking after them. I gave M'r Fitzgerrel no written power of attorney to act in any of these matters. I told M'r Fitzgerrel to go and look after this property and I would pay him whatever was right. I told him this after the purchase was made. Some three months after, during the first three months

after the cattle were purchased, they were under the control of Rusher and John Fitzgerrel, tenants, who were both on the farm at the time I purchased it. I do not whether they were tenants or employees of
Isaac Fitzgerrel. After I purchased the cattle I do not know
184 whether they were under the control of the employees of Isaac
Fitzgerrel or not. Neither of these men were in my employ from the time of the purchase of the cattle up till April 1st, 1868, so far as I know. It seems to me that at the time of the purchase or immediately thereafter I took a part of the horses and mules home and put them back on the Fitzgerrel place in the spring. I took no actual possession of the cattle that remained on the Fitzgerrel farm except through Isaac Fitzgerrel, my agent. I do not know what was done with the balance of the grain that was not consumed by the cattle. The goods I purchased of Fitzgerrel were invoiced by Isaac Fitzgerrel, John Fitzgerrel, and myself. After I purchased the goods, I hired a man by the name of Stanley and put him in the store. He remained there about three months. He came in some time in the month of January from the 1st to the middle of January. He was not in in the first week of January; I mean January, 1868. I did not give M'r Fitzgerrel the same authority concerning the goods as I did concerning the farm, for the reason that
I did not want him in there at that time. I employed M'r Fitz-
185 gerrel in the store some time in the spring of 1868. From the
time of the purchase of the goods by me up to the following March M'r Fitzgerrel had nothing whatever to do with the goods. I requested M'r Fitzgerrel some time in February to go in the store and give M'r Stanly some instruction about the price of the goods. Stanly had been selling goods some two or three weeks when I requested M'r Fitzgerrel to go in and give him some instruction. Stanley was not employed in the store when Fitzgerrel had it, and was unacquainted with the stock when Fitzgerrel had it. Stanley had no assistance except when I was in town, when I helped him. I was not in the store much. I do not remember the amount of goods sold to any particular person. I did not assist regular in the store. I was in town sometimes every day, sometimes every other day, and sometimes once in three days. I cannot now name any person to whom I then sold goods. I do not remember whether I ever personally sold any of the goods or not. I do
not think that Stanley was a man who had much experience in
186 selling goods or in the merchantile business. During the last
ten years I have been engaged principally in farming and merchandise business. The store is on the same lot that the Fitzgerrel dwelling-house is on. I had the key of the store from the time I purchased the goods up to the time I put M'r Stanley in the store. I do not remember whether M'r Fitzgerrel had a key to the store or not. He gave me but one key when I purchased the goods. This key was in my possession all the time from the date of the purchase by me to the time I put Stanley in the store. This is my recollection. When M'r Stanley went out I got M'r Fitzgerrel to go in the store. This was in the spring of 1868.

Question. Can you give dates nearer than in the spring?

Answer. I cannot; after M'r Fitzgerrel went in the store, he was alone, with the exception of the time I was in town, until the next fall. After M'r Fitzgerrel came into the store, I ordered some coal oil and paid for it. I also ordered some coffee and other goods that I don't remember just now, and paid for them. I purchased some goods to replenish the stock when Stanley was in the store. Do not remember from whom I purchased them. I think the customary cash rent for

land in Wayne County is from about $1.50 to $2.00 per acre.
187 That is, in 1872. I do not know what, or rather how much, land in said county would rent for during the years 1868, 1869, 1870, and 1871. As near as I can say the customary rent for the two farms spoken of would amount in cash to the sum of $150 per year. That is what I guess at. Outside of the property in dispute I don't know that I have any property not exempt from law and sale under execution since the purchase of the goods. I don't know that I have sustained any losses by fire or any other cause since the purchase of the goods. I have not disposed of any of my property without receiving an equivalent therefor, either in money or notes.

(All question' relating to the pecuniary circumstances of M'r Buffington now objected to by counsel for Buffington.)

Cross-examination:

M'r Fitzgerrel sold no goods for me till after the dissolution of the injunction in the original suit. He had no control of the goods; they were under my control. I think it was some two or three months from the time I purchased the goods till I was enjoined from selling them. I was enjoined by an injunction issued in the bankruptcy proceeding against Isaac Fitzgerrel, pending in the United States district
188 court for the southern district of Illinois. The money that Fitzgerrel paid on the Wood mortgage was obtained from the rents of the town property and farm and from products of the farm, and was paid by my directions. The amount was about $600. There still remains due on the note and Wood mortgage some $700 or $800. The money that was received from the sale of the goods I paid out on accounts to hands hired on the farm. I never paid any of it to Fitzgerrel for his benefit without any consideration. I do not know that Fitzgerrel ever received, directly or indirectly, any benefit of the money received by me for the sale of goods. At the time the injunction was served on me, about ¼ of the stock of goods had been sold. They were sold for cash. None of the personal property bought by me of Fitzgerrel was taken from me by the assignee in bankruptcy of Isaac Fitzgerrel. M'r Fitzgerrel did not receive the use or benefit of any of the property purchased by me of him without paying rent for it. The rent he had to pay was as high as people generally paid in that section of the country. I left the stock purchased of M'r Fitzgerrel on the farm for the benefit of the farm and because it was handy. The gross amount paid out on the notes given by me to M'r
189 Fitzgerrel was about $3,500 or $3,600. I had no knowledge of the purchase of the notes by Lindsley at the time he bought them or before that time. At the time I made the purchase of the personal property and real estate of Fitzgerrel, I had no knowledge of his insolvency. I thought he was solvent. I told M'r Fitzgerrel to go on and make the necessary improvements and rent the property, collect the rents and pay it out on certain things, on the mortgage and improvements. Under this authority he went ahead and made the improvements and paid out the money and collected the rents.

(Signed) TITUS BUFFINGTON.

On the 28th day of December, A. D. 1872, the cross-examination of Titus Buffington was continued, and was in substance as follows:

It was some time after I had made the purchase before I knew that Cooper had the note. The amount of the note I don't remember. It was some five hundred and odd dollars, to the best of my recollection.

I had no knowledge of a purchase of the notes by Farris. I don't know that Fitzgerrel has any interest in the notes purchased by Farris. I had no acquaintance with Farris at or before he purchased the notes
190 by him. I do not know him. I do not remember what the total amount of the property purchased from Fitzgerrel by me was. It was about nine or ten thousand dollars. I was clerk in the store of Jesse Keoms, West Chester, County, Pennsylvania, in my younger days. I was clerking for him about one year. I had no more to do with the mercantile business until after I come to Illinois. Somewhere in 1851 or 1852 I sold my farm and moved into Jeffersonville, Wayne County, Illinois, with the intention of engaging in the sale of goods. I had a partner with me in the proposed sale of goods by the name of Hugh McCoine. I intended to go into the sale of goods, but on account of the death of McCoine I did not. After Fitzgerrel was put into bankruptcy I made no effort to abandon the purchase I had made of him and to get possession of the notes. After the purchase made of him, and before he was put into bankruptcy, I went to Charles Beecher, the attorney of Bell & Son, and asked him if I should give up the property if I could get my notes back. He said he did not know, but that he was coming up to Springfield, and would ask Hay and would let me know. He did not let me know anything about it until I come up to Spring-
191 field. He said I could give up the property, but could not get my notes back without paying them off. That is all the effort I made to give up the property and get my notes back. My reason for purchasing the property was, they were talking of building the South-eastern Railroad, and I thought that property would advance rapidly. That is the reason why I purchased it. The reason for describing the property in the notes given therefor was to secure the payment without homestead or widow's dower. At the time I made the purchase the reputation of M'r Fitzgerrel was that he was solvent so far as ever I heard. There was no understanding between me and Fitzgerrel that he was to have any of the proceeds of this property back from me. It was my understanding that the transaction between me and Fitzgerrel was a fair and bona-fide one. It was a fair and bona-fide transaction.

Re-examination:

The $3,500 that I have paid on the notes includes the payments made by me. The endors'ments put upon the notes by Fitzgerrel, and the payments made on the notes held by Scott, and the payments made to R. D. S. Filson, in the estimates of the valuation of the property
192 given by me on my cross-examination, I arrived at the value by actual estimate, as near as I can remember at this time.

Question. Will you state how the estimate given in your cross-examination is made up?

Answer. It was from the amount set forth in the deeds and the notes, to the best of my recollection. I have no other way of ascertaining the value of the property than as it is set forth in the deeds and the notes. In giving the statements I testify from the best of my recollection. I testify from memory. I do not remember what I was to give for the lot in town. I do not remember what I was to give for the 41½ acres near town. I don't remember what I was to give for the 200-acre farm. I do not remember just what I was to give for any particular piece of land included in the deeds. In my conversation with M'r Beecher I did not tell him that I had no interest in the land or that I took it for M'r

Fitzgerrel, nor did I tell any other person so. I only wanted to give up the property and get my notes back.

(Signed) TITUS BUFFINGTON.

And on the 25th day of December, 1872, came LEANDER LINSEY, a witness for the complainant, who testified in substance as follows:

193 I reside two miles north of Fairfield. Am a farmer. I own a farm of 110 acres. I have been a farmer two years. Prior to going to farming I was a shoemaker. About three years ago M'r McCartney came and gave me some money to buy some notes from Isaac Fitzgerrel. He gave me money, twice to buy notes with. The notes were signed by Titus Buffington. I think I bought over $1,000 worth of notes in all.

Question. What instructions did M'r McCartney give you at the time he gave you the money, and what did he say about the money and about the notes?

(Question objected to by M'r McCartney, counsel for the bankrupt.)

Answer of Linsley. He told me to take the money and buy the notes from Fitzgerrel, which he held against Buffington, and also told me how much to pay for the notes. I gave the notes to M'r McCartney within a few minutes after I purchased them. I do not know what became of the notes after I gave them to McCartney. I have never heard from them since. I never had any interest in the notes. I know the 200-acre farm on which Fitzgerrel lives.

Question. Do you or do you not recollect that it was upwards
194 of two or three thousand dollars' worth of notes you bought?

Answer. I do not. M'r Buffington knew nothing about my purchasing the notes, so far as I know. I am a brother-in-law of M'r McCartney.

(Signed) LEANDER LINSLEY.

Also on the 27th day of December, 1872, came JAMES MCCARTNEY, a witness for the complainant, who testified in substance as follows:

My residence is Fairfield, Wayne County, Illinois; occupation, practicing attorney-at-law. I was employed by M'r Buffington and M'r Fitzgerrel in making out the papers, deeds, bills of sale, notes, &c., in December, 1867. It is my impression that there was a description of the land in the notes given therefor. I have forgotten. I think I have seen the notes since the transfer was made, but I cannot remember when or in whose hands they were. I have a recollection that I had those notes in my hands after that time, delivered to me by M'r Linsley; but I cannot tell positively now.

Question. Did you purchase for yourself or any other person any other notes given by M'r Buffington to M'r Fitzgerrel? If so, state of whom you purchased, for whom you purchased the same, the
195 amount of the notes, and the amount paid for said notes.

Answer. My recollection is that I did purchase of the notes. I do not remember how many, nor what was paid for them, but I think that I bought upwards of $2,000, perhaps more; I think between two and three thousand. My recollection is that I bought them for a M'r Farris, who I think resides in Kentucky; my recollection is that I told him (Linsley) to pay about seventy-five per cent. for them. I bought them of M'r Fitzgerrel through M'r Linsley; that was my understanding. I furnished M'r Linsley with the money to purchase the notes; I do not know where the notes now are nor to whom they were delivered;

I delivered them to some one, but I don't know to whom; I have not got them in my possession now. I do not remember who it was that furnished me with th' money that I gave to Linsley to purchase the notes with; it was not Farris, I am satisfied. My recollection is that the party who furnished me with the money stated that the purchase was to be made for Farris; I don't remember; I just have that impression. To the best of my knowledge and belief it was not M'r Titus Buffington,
196 who furnished me the money, either directly or indirectly, and to the best of my recollection it was not M'r Fitzgerrel, and I want it distinctly understood that I don't pretend to say who it was. I will not swear positively that it was not M'r Titus Buffington or M'r Fitzgerrel, because I do not remember who it was. In my deposition taken in January, 1872, in answer to the question "Was it Titus Buffington to whom you delivered the notes?" I answered, "If so, I did it as confidential attorney for him," and refused to answer on that ground. I had no correspondence with M'r Farris either before or since the purchase of the notes in relation thereto.

Question. How do you know you purchased these notes for Farris?

Answer. I do not know it. I got the information that the notes were to be bought for M'r Farris from the man who furnished me the money, but I do not remember who the was *was* that furnished the money. I had only been in Wayne County about two years at that time and had very few acquaintances, and the person who furnished me the money to buy the notes was probably a stranger; I do not remember that
197 it was a stranger; I am pretty positive that I have not seen any of those notes since, but I have heard from them only from Buffington, Fitzgerrel, and Scott. I am not *not* acquainted with M'r Farris and never saw him; I only heard that he lived in Kentucky. I know what the customary rents are in Wayne County; I think I do. The customary rent is ⅓ of the crop, the cash equivalent of which is from $1.00 to $1.50 per acre, and when the lands are situated close to a depot it would sometimes rent for $2.00 per acre for the land actually in cultivation. In my deposition in January, 1872, to the question "Was you attorney or agent of Buffington in the purchase of those notes?" I answered, "If so, it was as his confidential attorney," and refused to answer; my reason for giving this answer was that I thought the question improper; not that I refused to say that I was his attorney. I will swear that I was not Buffington's attorney for the purchase of those notes, but was his attorney in all his legal business at that time, I think.

Question. How do you know that you were not his attorney in the purchase of those notes?

Answer. All I can say is that if I was I do not know it and did not at the time. I cannot now swear positively whose attor-
198 ney I was in the purchase of those notes any further than I have stated.

(Signed) JAMES McCARTNEY.

199 Also, on the 28th day of December, 1872, come ISAAC FITZGERREL, a witness for the complainant, who, being duly sworn, &c., testified in substance as follows:

I am the man that was adjudged a bankrupt about 4 years ago by the district court of the U. S. for the southern district of Illinois. The two deeds, bearing date Dec. 30th, 1867, contain a description of all the real estate which I owned at that time, except an interest that I had in a sixty-acre tract, mortgaged to M. E. Reeves & Co. at about its full value. At the same time I sold the land I sold a stock of goods and a horse or two and some cattle. All the land and personal property was

sold to Titus Buffington. At the time I sold the land to Buffington there was a mortgage on the 200-acre farm to Charles Wood for $1,000. I have paid a part of the Wood mortgage, but I don't recollect what amount. Part of it was paid before I was adjudged a bankrupt and part afterwards. I sold the property to Buffington and took notes for it, but do not remember the amount of the notes. I cannot give the value of the different tracts of land nor the aggregate value. The goods were invoiced, and they were worth between $2,000 and $2,500. There was a value put upon the other personal property, but I do not know
200 what the valuation was or hardly what the property was. I received a considerable amount from the goods sold and gave Buffington credit for the amount I received and paid my home debts out of it. James Stanley was employed by Buffington, and sold goods about one month. I had permission from Buffington to sell these goods to men who I was owing, and apply them in payment of my debts. James Stanley kept the books. The amount of goods I received was credited on Buffington's notes. I assigned one of the notes to George Scott for $500 or $600, and one note to Thomas L. Cooper for about $500 or $600, and it was understood between Buffington and myself, when these notes were made, that they were to go to pay these two debts. There was no money received upon them, but simply made to pay these two debts. I assigned some of the notes to Leander Linsley. Do not recollect the amount, but it was over $1,000, and may have been over $3,000. I sold the notes at a discount of 33 per cent., and got the money for them. The remainder of the notes I sold to Henry Farris, of Kentucky. I went to Kentucky to execute said sale. I think said sale was made before the filing of the petition in bankruptcy against me. The value of the
201 notes sold to Farris was upwards of $3,000. The notes I sold to Linsley were assigned before my bankruptcy. I do not recollect whether or not Buffington paid me. The money I received from the sale of the notes I have applied in various ways, in paying debts, buying stock for the farm I lived on, and in support of my family. I have paid no large debts; nothing but home credits. I have had the possession and control of the real estate most all the time since the transfer to Buffington, either as renter or agent for Buffington. I have used the 200-acre farm two years myself and a part of it for three years. I had no written contract for the rent of the farm, but I was to go on it and improve it as it was my own, and Buffington was to do what was right about it. There was no time set as to how long I was to have it, but, in case Buffington sold it, I was to give it up. I have paid rents to Buffington on the property only by way of taxes, except one field, which I took a note to Buffington for $50 and gave him the note. I may have paid him something more, but to no large amount. I took no security from Buffington on the notes which I got of him, except as stated in the notes. I considered Buffington good enough without security. I had
202 no means left to pay my creditors after making the sale to him. I have known him for about 20 years, and have done considerable business with him in that time. I don't know that I gave Buffington any reason for my wishing to make the sale. I do not recollect whether I told him I was owing anything or not. I was pushed by C. A. Beecher to pay some of my debts at the time I made the sale. I made the sale because I wanted to make it and I had a reason for it. I refuse to give any other reason than that my creditors were pressing it. There was no understanding between Buffington and myself that in case he sold the property which I let him have for more than he gave me, that I was to have the benefit of the overplus. I do not recollect whether I or M'r

Buffington was to assume the payment of the mortgage to Charles Wood. Buffington has never received anything from the sale of the Buffington notes, either directly or indirectly, to my knowledge.

Cross-examination:

I considered Buffington perfectly good for the amount of the notes which I took of him at the time I made the sale, including what I
203 was letting him have. Buffington has paid me a considerable amount on the note since the sale. I also know of his paying George Scott something on the note assigned to him. I have never had any final settlement with Buffington in regard to the rents, but I expect to settle with him and pay him the rents after deducting the improvements I have made. Buffington had a good farm of about 100 acres, and had it well stocked. He had a good stock of horses; don't know the number. He had a good stock of sheep, but I don't know the number. He also had cattle, but I don't know the number. I intend to make a final settlement with Buffington when convenient. He has never called upon me for a settlement for the rents and improvements; some of the payments made by Buffington to me were made before, and some after, I was adjudged a bankrupt. They were all indorsed on the notes, but don't know whether they were indorsed as paid in or all at one time.

Re-examined:

I don't know where the money came from that I got of Linsley for the notes. I never spoke to Linsley about his buying the notes
204 until he spoke to me. I signed the notes in blank, and gave them to Linsley. I never employed McCartney to negotiate a sale of the notes to Linsley. I employed McCartney as a general attorney to attend to and transact my business, but don't think I employed him to buy the notes. McCartney never got any of the money for those notes from me. I don't know who he got it from. Buffington never got any of the money from me. None of *of* the money directly or indirectly went into the hands of Buffington or McCartney to my knowledge. I negotiated the sale of the notes to the man in Kentucky myself. I don't know where Farris got the money to buy the notes. He is a farmer, and lives near Glasgow.

Question. How much did you pay for repairing the house in town?

Answer. About $60.

Question. How much rent did you get for the house in town?

Answer. The first year I got $15.00 per month; the second year I rented a part of the time to Howe for $18.00 per month. He rented it for six months, but did not stay the time out, and part of the time to Covington at $9.00 per month. I rented the store-house a part of
205 the time at $6.00, and a part of the time at $7.00 per month. It has not been rented all the time. I have received the rents myself all the time as far as they have been paid.

Question. How *you come* to go to Linsley to sell these notes?

Answer. I never went to him at all; he came to me. I cannot state which notes I sold to Linsley. My impression is they were along the first due. Some of them were, and some of them were a little later. I am confident of it. I have seen the list of these notes mentioned in Buffington's answer. I cannot tell from that list which notes were assigned to Linsley or Farris, or which were assigned to Cooper or Scott. The notes were assigned to Linsley in the spring, after they were given, and I think likely in March. The notes were assigned to Farris the same spring, but I think later; I think in April. It was before I was ordered to show cause why I should not be declared a bankrupt. The notes were

assigned to Scott directly after they were given. They were made for that purpose. I don't think I have seen any of these notes after I assigned them. I had no correspondence with M'r Farris before I
206 went to Kentucky to see him. I can't tell when I saw him last before that time. It had been several years. I went to Kentucky with the express purpose to try and sell the notes to some person, as I supposed there was money in that part of the country. I had no particular person in view in Kentucky to whom I could sell the notes. I had a brother-in-law there who was pretty well off before the war. I supposed I might, may be, sell to him, but did not know. I went to M'r Farris because he was a relation of mine, and I went to see him. I had not had any letter from M'r Farris since the war. There had been no correspondence between us. I think M'r Farris lived some five or six miles from town. I am not positive; I don't know. I knew that he had a tract of land; don't know how large a tract; don't know that I saw any stock on the farm except two teams, with which they were ploughing. I knew nothing about his financial condition, only that he was in easy circumstances. I made the sale to Ferris the second day after my arrival there. The sale was made at Farris' house. I delivered the notes
207 to him the evening after the sale was made. He gave me the money, but I can't tell the amount.

Question. Can you tell within one thousand dollars of what you got for the notes?

Answer. I can't tell anything about it. I don't recollect. I cannot tell what I got for the notes, and I am not going to guess at it. M'r Buffington had paid me something on the notes before I sold them, but I can't tell how much. The reason that payments were made on these notes by Buffington before they became due was, that I got in a tight place for money, and I wanted some money, and, of course, he let me have some, and also the rents that were due him on the town property that I lived in, and on the farm. I also got some goods of Stanley, which were put in and all credited on the notes. I cannot say how much was credited on the notes, as it was a mixed-up affair. I think I credited on these notes all that Buffington paid me up to the date that I sold them. Terms, Ferris paid me the balance due on these notes after making the discount agreed upon. If there was a deed between me and Buffington by which I credited him with fifteen hundred dollars, it was the items credited upon the notes I sold Ferris. I guess it was.
I don't dispute that I said in my deposition of May 22, 1871, that
208 there was a deal between me and Buffington, by which I credited him with 1,500$ (dollars) on the notes. That I do not recollect the amount now. Before the sale of the notes to Ferris I met him at a little town on the railroad, near where Ferris lived. I don't recollect the name of the town. I think it was about 3 miles from where Ferris resided. I happened to meet with him there the next day after we had made the contract. I do not know there was any bank at that town or not. I did not look for any. I had not entirely made the contract with Ferris before I met him at the depot. He had not fully agreed to take them before that time. I went to his house that evening and consummated the bargain with him, and received the money from him. He paid me in the common currency of the United States. I brought the money home with me. I cannot say whether Farris had the money in the house or not. I did not assist him, either directly or indirectly, in finding the money to purchase the notes with. I think that all the notes received from Buffington were sold to either Lindsley, Ferris, Scott, or Cooper; that is, some to each. I took nothing with me to

show that the notes were good, or whether Buffington was good. There was something said about it, but I do not remember what. I am
209 satisfied that I told Ferris that Buffington was good. I don't recollect what I did say about Buffington being good. M'r Ferris has not written to me relative to the notes since I sold them to him. I don't think that I recommended any man to him to act as his agent in Illinois. I consider that 272$ is a reasonable rent for lot No. 19 and the 41¾ acres for the year 1868. I think that this 272$ was credited on the notes that was sold to Ferris. I do not know who was on the farm when I sold it to Buffington. My son might have been. I carried on the farm the year before I sold it, but I don't know just who was on the farm. Rusher was working on the farm for some share of the crop. I can't tell whether my son John had any control of the farm or not. He might have been superintending, through my instructions, the first year after I sold the farm to Buffington. I had no control of the farm except to look after it. I don't think I rented the farm for Buffington that year. I cannot tell now *tell* who was on the farm that year. I have not charged my mind with these things. I might have been superintending the first year under his instructions. I think that it is very likely that I did superintend it. I can-
210 not tell whether I collected any rents for M'r Buffington the first year or not. I don't think I ever rented the farm for anything but grain rent. M'r Buffington run the farm one year; thought I looked over then. I suppose I carried on the farm for the years 1870 & 1871, and what I paid him therefor I paid him in improving the property. I made no division of the grain that year, to see what the rent would amount to. Buffington and I have never settled that up, either as to the amount I should pay, or as to the value of the improvements made by me. I acted as his agent, or friend, in looking after the farm, from the time he purchased it to the present time. I was authorized to rent the farm if I could. I don't know that I was authorized to use the rents and proceeds of the farm in improving it when it was rented to other parties. I will not swear that I was not authorized. I cannot recollect how much money I paid on the Wood mortgage. What I paid on the mortgage was derived principally from rents on the town property. I paid the three hundred dollars to Shafer during the two years that I was on the farm. I paid Woods something the year before I went on the farm, in 1869, I suppose. I paid part of that mort-
211 gage before I went into bankruptcy; don't know how much. I think I collected some rents for the farm the first year after I sold it. If that was the year the beans were raised, I did. I don't know when the cattle was sold. I don't know whether I sold them or not. I don't recollect anything about the stock transaction, with the exception of the mules. The signature to the bill of sale now shown me, and which is marked "Exhibit A," is my signature, and the amount, 680$, is the consideration agreed to be paid for the property therein enumerated, that is, I do not dispute, but I do not recollect it. I have no recollection that I collected for the farm for the year 1869. I don't know that I rented the farm that year as agent for M'r Buffington. I do not know what would be a reasonable cash rent for that farm. I do not know of any farm in that neighborhood renting for cash. I suppose that 15$ per month would be a reasonable rent for the house in town; property in town might rent for a little more now than the year I rented.

Cross-examination:

I know that Buffington had no knowledge that I was going to sell the notes. He evidently had no interest in the notes I sold to Farris
212 at the time I sold the property to Buffington. I made no statements to him about my indebtedness. I cannot tell whether Buffington had at that time any knowledge of my financial condition or not. There was not, at or before the sale, any agreement between Buffington and me, as to my retaining any secret interest in the property. I have not, since the sale of the property, had any interest therein as owner. There is no agreement between us that in the event that Buffington should be successful in the event of this suit, that he is to return to me any of the property. I suppose the transaction between us was a bona-fide one on the part of Buffington; it was on my part. M'r Buffington never gave me any directions about the sale of the notes. I never consulted him about the sale before it was made. The money paid on the Wood mortgage was *done* from Buffington, although there was a turn made in making the payment. I boarded Wood and his granddaughter and kept some of Buffington's money for the amount due for board. I was examined as witness in the injunction case in bankruptcy proceeding. To my knowledge Buffington had no
213 knowledge of my selling the notes to Lindsley.

Re-examination:

I don't know when I boarded Wood and his granddaughter. It was after my bankruptcy, but before I moved out on the farm. I boarded them to the amount of 130$, at the rate of six dollars per week for the two. I never settled with M'r Wood for the board. He died before we settled. I had never taken any receipts for money paid to Wood or Shafer. The reason that I sold all my property on credit was, that I had a thought of leaving the country. I was crowded, and I thought I would sell out and arrange my business myself. I had been notified by an attorney that legal proceedings would be commenced against me if I did settle up within three days, and within that time I disposed of all the property before mentioned.

Question. Did you intend by this transfer to convey all your property to Titus Buffington which could be reached by your creditors?

Answer. I sold all my property with the intention of leaving the country.

Question. Did you intend to dispose of all your property which
214 could be reached by your creditors in the transfer to Titus Buffington?

Answer. I did not do so to defraud my creditors.

Question. What property had you left?

Answer. I had a horse, buggy, wagon, cow, and perhaps some hogs, not very many I guess, and an interest in the 60 acres of land mortgaged to M'r E. Reeves & Co. I intended by that transfer to dispose of all my other property. Circumstances so turned up so that I could not leave the country. I presume that one of these circumstances was the filing of the petition in bankruptcy against me.

Recross-examination:

I did not state to Buffington my intention of leaving the country, neither did I give him any reason why I wanted to dispose of the property.

(Signed) ISAAC FITZGERREL.

Also, on the 22d day of January, 1873, came DAVID W. BARKLEY

and ROBERT T. FORTH, who, each being duly sworn, testified as follows, by agreement of parties being called as witnesses for the defendant:

215 We have been acquainted with M'r Fitzgerrel for at least 10 years before the first day of January, 1868, and during that time we think the general impression of the community was that he had property amply sufficient to pay his debts.

Cross-examination:

Don't know that we knew his financial condition in December, 1867

Also, in open court, on the trial of the above-entitled cause, come R. D. S. FILSON, a witness, who, being duly sworn, testified as follows:

I have been acting as attorney for defendant since January 17th, 1872. I believe I proposed the first two answers in this case; have had some of Buffington's notes in my possession since *since* the filing of the first of the answers. It was in the latter part of June or July last. I received two of them in a letter from Farris. I never saw M'r Farris himself. They were overdue when they came to my hands. My recollection is that they were in the neighborhood of $900 each. The letter requested me to collect and remit the money; letter mailed in Kentucky, Glasgow I think; never had any correspondence with him otherwise. A day or two after I received them I collected them. Generally I keep

216 a memorandum of transactions in my office when I expect any trouble; but when there is none expected I do not. I was aware of this suit being pending. There was not over $500 due on the notes. I sent the money to M'r Farris, I think, by registered letter. I don't remember whether I got any acknowledgment of the receipt of it. There was a description of the land in the notes.

Cross-examined:

Could not tell the date of endorsement on notes. When they were paid I delivered them to Buffington. I cannot remember whether the endorsements were of the same date on each note. I had nothing to do with the original transaction.

Upon the hearing of said cause upon bill, answer, replication, and proof aforesaid, to wit, at the January term, A. D. 1873, the following decree was made and entered by the court:

217 In the circuit court for the southern district of Illinois.

MONDAY, *February 3d*, A. D. 1873.

Present, the Honorable Samuel H. Treat, district judge.

CHARLES D. HARVEY, ASSIGNEE OF THE ESTATE of Isaac Fitzgerrel, a bankrupt,
vs.
TITUS BUFFINGTON.

Now on this day, this cause coming on to be heard upon bill of complaint answer, replication, and proofs herein, and was argued by counsel, and thereupon, in consideration thereof, it was ordered, adjudged, and decreed by the court, that the conveyance made and delivered on the 30th day of December, A. D. 1867, by the said Isaac Fitzgerrel and Martha Fitzgerrel, his wife, of the following-described land, lying and

being in the county of Wayne and State of Illinois, to wit: The southeast quarter of section nine (9) and the west half of the southwest quarter of section ten (10) in town. one (1) south, range eight (8) east, except ½ acre heretofore set apart for a family burying-ground; also a strip of forty acres off the south side of the whole strip heretofore conveyed to James A. McLin; also the undivided ½ of the N. E. ¼
218 S. W. q'r and the N. W. ¼ of the southeast quarter of section twenty-two, (22,) town. one (1) north, range six (6) east; also the northeast ¼ of the northeast quarter of section four, (4,) town. two (2) south, range eight (8) east; also the north ½ of the southeast quarter of section thirty-three, (33,) town. one (1) south, range eight (8) east of the 3rd P. M. Also lot 19 in the original town of Fairfield; also lot No. 17 in the original town of Fairfield; also lots No. 2 and 3 in Barnhill's addition to the said town of Fairfield; also a tract of land described as follows: Beginning on the dividing-line between the northeast and the northwest quarter of section six (6) in town. two (2) south, range eight (8) east, at a small cherry-tree 28½ rods north from the northwest corner of lot No. eight (8) in the town of Fairfield, thence running due east until it intersects the first small ravine, thence down said ravine to the middle of Johnson's Creek, thence down said creek until it reaches the mouth of the second branch that empties into Johnson's Creek on the north side, thence north with said branch to the north line of the northeast quarter of section 6, T. 2 S., R. 8 E., thence with said line to the northwest
219 corner of said quarter-section, thence south to the place of beginning, excepting one acre and one-quarter acre now used as a cemetery. Also excepting five acres heretofore sold to the Agricultural Society for a fair-ground. Also excepting two acres heretofore sold to James B. Ardery—to the said defendant Titus Buffington, which conveyances were recorded in book V of the records of deeds in Wayne County, Illinois, be set aside, vacated, and annul'd, except as to a tract of about three-fourths of an acre heretofore sold by the said defendant, and that the said defendant deliver up and surrender all these lands to the complainant or his duly-authorized agent; and it is further ordered, adjudged, and decreed that the complainant have and recover from the defendant, and that the defendant pay to the complainant, the sum of three thousand eight hundred and ninety-one dollars and eighty-eight cents.

It is further ordered, adjudged, and decreed that this complainant recover of this defendant the costs in this suit to be taxed, and that he have execution as upon a judgment at law therefor, as also for the said sum of three thousand eight hundred and ninety-one dollars and eighty-eight cents.

220 Your orator would further represent unto your honor that he believes that there is manifest error in finding the issues for the complainant on the foregoing evidence; that said evidence is insufficient to sustain the said decree because of want of proof to sustain the bill, and that the bill should have been dismissed; also, because the evidence shows that more than two years had elapsed from the making of the deed and before the bill was filed, and that, therefore, by the statute of limitations, the bill could not be sustained.

And your orator would further assign for error the fact that the decree in this cause made gives a judgment against the defendant for a larger sum of money by over $1,000 than there are debts proven against the bankrupt.

Also the fact, shown by the evidence of Barkley and Forth, that they had known Fitzgerrel for more than ten years, and that they had no

reason to suppose that he was insolvent or contemplated insolvency, corroborating the evidence of Buffington, that he had no reasonable cause to believe the said Fitzgerrel to be insolvent when he purchased the property.

221 Your orator would, therefore, pray that all the papers filed in the said cause of Charles D. Harvey vs. Titus Buffington may be taken as a part of this bill, as also the records and the orders of the court therein, and that your honor will review all the proceedings and all the pleadings and evidence in said cause for the errors heretofore assigned, as well as any other manifest errors therein, and that upon a final hearing of this cause, that your honor will order, adjudge, and decree that the decree heretofore rendered in this cause be reversed, annul'ed, and set aside, and for naught held, and that the bill filed herein by the said Charles D. Harvey be dismissed; and that your honor will grant such other and further relief as to equity and good conscience may belong, your orator will ever pray, &c.

TITUS BUFFINGTON, *Petitioner.*

JOHN E. ROSETTE & BRO.,
Solicitors.

(Endorsed:) Filed October 16, 1873. J. A. Jones, clerk.

222 Then, afterwards, to wit, on the sixteenth day of January, in the year of our Lord one thousand eight hundred and seventy-four, came again said complainant and filed in the clerk's office of said court his demurrer to bill of review, which said demurrer is in the words and figures following, to wit:

Demurrer to bill of review.

CHARLES D. HARVEY, ASSIGNEE OF ISAAC Fitzgerrel, bankrupt, *vs.* TITUS BUFFINGTON. } Chancery.

The demurrer of Charles D. Harvey, complainant, to the bill of review of Titus Buffington, defendant.

The complainant, by protestation, not confessing or acknowledging all or any of the matters and things in said bill of review to be true in such manner and form as the same are therein and thereby set forth and alleged, doth demur thereto, and for cause of demurrer showeth that the said defendant hath not, by his said bill, made such case as entitles him to any review touching the matters contained in said bill.

Wherefore, and for divers other good causes of demurrer appearing in said bill of review, this complainant doth demur to said bill and to all the matters and things therein contained, and humble

223 prays the judgment of this honorable court whether he shall be compelled to make any further or other answer to said bill, and prays to be hence dismissed with his costs, &c.

I certify that in my opinion the foregoing demurrer of Charles D. Harvey, complainant, to the bill of review of Titus Buffington, defendant, is well founded in law, and proper to be filed in the above cause.

RICHMOND WOLCOTT,
Solicitor, and of Counsel for Comp't.

UNITED STATES OF AMERICA,
Southern District of Illinois, ss:

Charles D. Harvey, being duly sworn, does depose and say that he has made the foregoing demurrer to the bill of review in this suit, and that the same is not interposed for the purpose of delaying said suit or any proceedings therein.

CHARLES D. HARVEY.

Subscribed and sworn to before me this 16 day of January, A. D. 1874.
J. A. JONES, *Clk.*

(Endorsed:) Filed Jan'y 16, A. D. 1874. J. A. Jones, cl'k.

224 Now, afterwards, to wit, on the twenty-fourth day of February, in the January term of said court of the year last aforesaid, the following further proceedings were had in said court in said cause and entered of record, to wit:

Order sustaining demurrer & dismissing bill of review, &c.

CHARLES D. HARVEY, ASSIGNEE OF ISAAC Fitzgerrel, a bankrupt, *v.* TITUS BUFFINGTON. } In chancery.

This day this cause came on to be heard upon complainant's demurrer to defendant's bill of review herein filed, and the court having heard argument of counsel, and being sufficiently advised in the premises, is of opinion that said demurrer be sustained and bill of review dismissed at cost of defendant, and that execution issue for said costs, as in judgments at law.

Whereupon the defendant prays an appeal to the Supreme Court of the United States, which is allowed on his entering into bond to the complainant, in the penalty of two thousand dollars, conditioned as the law directs, within sixty days.

225 *Bond.*

Know all men by these presents that we, Titus Buffington, James A. McLin, and R. T. Forth, are held and firmly bound unto Charles D. Harvey, assignee of Isaac Fitzgerrel, in the sum of two thousand dollars, to be paid to the said Charles D. Harvey, assignee as aforesaid, his successor in office, assigns, administrators, or executors, to which payment well and truly to be made we bind ourselves and each of us jointly and severally, and each of us, our heirs, executors, and administrators firmly by these presents, sealed with our seals, respectively, and dated this 20th day of April, A. D. 1874.

The condition of this obligation is such that whereas Titus Buffington has prayed an appeal to the Supreme Court of the United States from a decree of the circuit court of the United States for the southern district of Illinois, rendered in the case of the said Titus Buffington against the said Charles D. Harvey, assignee, &c., bill for review:

Now, therefore, this obligation is such that if the above-bound Titus Buffington shall prosecute his appeal with effect and answer al
226 damages and costs if he shall fail to make good his plea, the

this obligation shall be void; otherwise shall remain in full force and virtue.

TITUS BUFFINGTON. [SEAL.]
JAMES A. McLIN. [SEAL.]
R. T. FORTH. [SEAL.]

Signed and sealed in presence of—
R. P. HANNA.

Approved.

S. H. TREAT,
Dist. Judge.

STATE OF ILLINOIS,
Wayne County, ss:

I, John L. Handley, clerk of the circuit court in and for said county and State, do hereby certify that the above-named James A. McLin and R. T. Forth are fully good for the amount of the sum in the above bond.

Witness my hand and seal this 20th April, A. D. 1874.

[L. S.] JOHN L. HANDLEY, *Clk.*

(Endorsed:) Filed April 24, 1874. J. A. Jones, cl'k.

227 *Certificate.*

Circuit court of the United States, southern district of Illinois, ss:

I, J. A. Jones, clerk of the circuit court of the United States for the southern district of Illinois, do hereby certify the foregoing transcript to contain a true and correct copy of all the papers filed and proceedings thereon had in a certain cause wherein Charles D. Harvey, assignee of Isaac Fitzgerrel, a bankrupt, is complainant, and Titus Buffington is defendant, as truly and correctly as the same appear of file and record in my said office.

In witness whereof I have hereunto set my hand and seal of said court, at my office in Springfield, in said district, this fourth day of September, in the year of our Lord one thousand eight hundred and seventy-four, and of our Independence the ninety-ninth year.

[SEAL.] JNO. A. JONES, *Clk.*

228 UNITED STATES OF AMERICA:

Supreme Court of the United States of America, October term, A. D. 1874.

CHARLES D. HARVEY, ASSIGNEE OF ISAAC FITZ-
gerrel, a bankrupt,
vs.
TITUS BUFFINGTON.

Appeal from the U. S. circuit court for the southern district of Illinois.

Assignment of errors.

I. The court erred in sustaining the demurrer to the bill of review.
II. The court erred in entering a decree for the complainant.
III. The court erred in overruling the petition for rehearing.
IV. The court erred in finding the issues for the complainant.
V. The court erred in overruling motion to dissolve the injunction.

229 And now comes the said defendant, Titus Buffington, by John M. Crebs, his attorney, and says that in the record and proceedings aforesaid there is manifest error as above set forth. By reason of which, he prays that the decree in said cause be reversed.

By JOHN M. CREBS,
Att'y for Appellant.

(Indorsement on cover:) No. 52. Titus Buffington, appellant, vs. Charles D. Harvey, assignee of Isaac Fitzgerrel. S. Illinois C. C. U. S. Filed 25th February, 1875.

Supreme Court of the United States.

OCTOBER TERM, A. D. 1877.

NO. 52.

TITUS BUFFINGTON, APPELLANT,

vs.

CHARLES D. HARVEY, ASSIGNEE &c., APPELLEE.

APPEAL FROM THE CIRCUIT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS, IN THE 8TH JUDICIAL CIRCUIT.

ARGUMENT FOR APPELLANT.

—BY—

THOMAS J. HENDERSON, ATTORNEY.

Supreme Court of the United States.

OCTOBER TERM, A. D. 1877.

TITUS BUFFINGTON, APPELLANT,

vs.

CHARLES D. HARVEY, ASSIGNEE OF ISAAC FITZGERREL, A BANKRUPT, APPELLEE.

APPEAL FROM THE UNITED STATES CIRCUIT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS, IN THE 8TH JUDICIAL CIRCUIT.

Argument for Appellant.

This case standing upon a general demurrer to the bill, we can only consider the substance of the bill and if there is any allegation in it which being true, would authorize a review of the former proceedings in the case, the demurrer should have been overruled. It is an elementary and undisputed rule of pleading that a demurrer admits to be true, all that is well pleaded in the pleading attacked, and if no specific allegation is alleged in the demurrer where there is more than one allegation made in the bill, then if any of the allegations are good the demurrer must fail. In this bill there are many allegations of error made by the bill of review, in the prior proceedings in the cause, and if any of them—being admitted to be true—should have caused the court to review its preceeding action, then the bill should have been sustained, and the demurrer overruled.

Bills of review are similar in their nature to writs of error in the same court in which the decree is entered. Story's Eq.

Plead. 322, 324. Maddox Ch. Vol. 2 536 to 538. 2 Smith's Ch. Prac. 48, 50, 53. Story's Eq. Pl. § 403, 404, 405, 407, Cooper's Eq. Pl. 88 et. seq. It follows then, that if anything occurs in the former proceedings which would reverse the cause upon error the bill of review will correct it in the same court. Bills of review are of two kinds. Bills brought for error of law appearing upon the face of the record, and bills brought upon the discovery of new matter. This bill is brought for error appearing upon the face of the record, and it sets forth in full the pleadings and the whole record in the case. "Bills in the nature of bills of review do not appear subject to any peculiar cause of demurrer, unless the decree, sought to be reversed, does not affect the interest of the person filing the bill." Story's Eq. Pl. 3 637.

"The constant defence to a bill of review for error upon a decree, has been said to be by a plea to the decree and demurrer against opening the enrollment." Gould vs. Tancred 2 Atk. 534. Mitford's Eq. Pl. by Jeremy 203. Cooper. Eq. Pl. 215. Dancer vs. Evett 1 Vern. 392. Smith vs. Turner 1 Vern. 273. Webb vs. Bell 3 Paige 368. Story's Eq. Pl. § 634. There seems no necessity of pleading the decree if it is fairly set out in the bill, and the books of practice only contain forms of demurrer to such a bill. Lord Redesdale says: On argument of a demurrer to a bill of Review where several errors in the decree have been assigned, if the plaintiff should prevail only in one, the demurrer must be overruled, as one error will be sufficient to open the enrollment. Mit. Eq. Pl. by Jeremy 204. Lord Chancellor Lifford is reported to have said in Lindsay vs. Bell Finley's Irish Index, that a case can hardly arise in which a demurrer can be put in to a bill of review. Mitford's Pl. 240 note 4. Deemy vs. Filmer 2 Freem. 171.

Where any matter beyond the decree is to be offered against opening the enrollment that matter must be pleaded. Mit. Eq. Pl. 242. The portion of the bill of review setting out the evidence in the cause may be surpluseage and unnecessary therein, but this can not be reached by a general demurrer, and in no event would be ground for a dismissal of the bill as was done by the Circuit Court in this case. It was therefore proper to set out all the pleadings and proceedings of the court in the cause and the decree entered by the court, as these constitute the record and the demurrer can not be sustained upon that ground. Gardner vs. Emerson 40 Ills. 296. Story's Eq. Pl. 407 et. seq. Cooper's Eq. Pl. 95. Getzler vs. Saroni 18 Ills. 511. Adams Eq. 418. Judge Story in his commentaries on Pleading § 407 says: "In the courts of the United States, the decree usually contains a mere reference to the antecedent proceedings without embodying them. But for the purpose of examining all errors of law the bill, answers, and other proceedings, are in our practice, as much a part of the record before the court as the decree itself; for it is only by a comparison with the former, that the

correctness of the latter can be ascertained. And in the American courts, where the English practice of reciting the proceedings in the decree does not prevail, the proceedings themselves are the subject matter of revision in a bill of review to the same extent and in the same manner as if they were stated on the face of the decree."

What reason then can be alleged in support of the demurrer to the bill filed in this cause? The appellant in this cause is in a peculiar situation, being required to sustain his bill against an attack in the dark, he not knowing what defects will be urged against his bill. That leave of the court was had to file the bill of review; (See Page 51 of Printed Record), that it was filed, and a demurrer sustained to it, and the bill dismissed, is all that appears. No reasons are given in the demurrer; in the opinion of the court; or anywhere else enlightening him upon the grounds of demurrer to the bill, or the grounds which induced Judge Treat sitting as a Circuit Court to sustain the demurrer. Was it sustained, because the bill of review does not allege the performance of the decree? We imagine this must have been the reason as it was the only ground of demurrer urged in the court below. In the bill of review it is alleged and urged that the decree is unjust, and upon this ground we were not required to perform it before bringing the bill of review. Partridge vs. Usborne 5 Russ. 195, 244, 253. Lube's Eq. Pl. 179. 2 Daniels Ch. Pr. 1626 et. seq. Again; this objection can not be taken by demurrer to the bill but must be raised by motion. In the case of Griggs vs. Geer 3 Gilman 2, the court say. "In this case it does not appear that the parties have performed the decree, nor was previous leave given to file this bill without performance, although the complainants aver in this bill their inability to perform; yet, if the defendant wished to raise that objection to the rights of the complainants to file this bill, he should have moved the court below upon his first appearance, to have stricken the bill from the files, or to have dismissed the suit, and not went on and treated it as regularly filed. By demurring to it he admits that it is properly in court, and only objects that the statements in the bill show no ground for relief. The performance of the decree is not necessary to the jurisdiction of the court, but was merely a personal right which the defendant might have insisted upon, and which he should have urged at a proper time. He has chosen, however, to rely upon the insufficiency of the case as presented by the bill, and having consented to enter upon the merits of the controversy, he must abide the result." In the case of Honrer vs. Zimmerman et. al. 45 Ills. 21, the court say, "The appellant makes the point, that as this is a bill of review and does not deny the justice of the demand established by the decree sought to be reviewed, the complainants should allege they have paid it and the costs, or give a reason for omitting to do so. This

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we understand to be the settled doctrine of bills of review as will be found in all the elementary treatises on the subject. But to avail of this, the appellant should have made his *motion* in the court below not to receive the bill * * * * * Appellant has treated it as a bill properly filed and he must be bound by it." In the case of Forman vs. Stickney et. al. 77 Ills. 575, decided in 1875, the court say, "It is insisted that the court erred in overruling the motion to strike the amended bill from the files; that the motion should have been allowed, as the bill failed to show that complainants had complied with the former decree, or paid the costs of the same, or to show any reason for not having done so. Before the amendment of the bill, defendant had demurred to it. By so demurring she admitted the bill was properly in court. She could not afterward raise the objection that the bill was not regularly filed, because of non-performance of the original decree. In order to successfully raise that objection, she should have *moved* the court below, upon her first appearance, to have stricken the bill from the files, or to have dismissed the suit." In the case at bar the court gave special leave to file the bill, (Page 51 of Printed Record) which was done upon the affidavit of appellant that he was unable to perform the decree although the affidavit is not copied in the record, because the matter being discretionary with the court below as to whether the bill should be filed, or not, and the leave having been there given, the exercise of that discretion could not be called in question in this court. If the appellee desired to raise that objection,—as the Supreme Court of Illinois say,—he should have made a motion to dismiss and then the question could have been again heard by the court, and the court could have sustained, or overruled the motion. But the demurrer only claims that there are defects apparent upon the face of the bill which are fatally defective thereto, and admits the bill to have been properly filed.

Now does the bill of review contain any allegations of error which authorizes a review of the former decree, or show any error therein? The first error alleged is that the complainant was guilty of laches in filing the original bill and that the 5ourt should therefore have refused the relief prayed. In the bankrupt act of 1867, it was provided, and was made a positive ground of authority to sustain a bill to set aside a fradulent conveyance made by a bankrupt, that the bill should be filed within two years after the conveyance was made. This was not a statute of limitations either in its nature, or in any feature of the act itself. It was made, not as a statute of limitations but as a positive requirement before jurisdiction could be obtained. It does not read as any other statute of limitations does. "But no *suit at law, or in eguity shall in any case be maintainable by*, or against such assignee, or by or against any person claiming an adverse interest touching the property and rights of property aforesaid, in any court whatsoever, unless

the same shall be brought within two years from the time the causeof action accrued for, or against such assignee." No words can be stronger, or plainer than these, that at the end of two years from the time when the cause of action accrued for the assignee, all jurisdiction "in any court whatsoever" to maintain a bill to set aside any fraudulent conveyance ceased to exist and could not afterwards be revived. To this there are no exceptions provide . In no limitatton law in existence do such words as are contained in this section exist. In no case is such vigorous, strong and positive language used as in this section, where the intention is simply to make a statute of limitations. This construction of the law is based upon reason also, because it was evidently intended for the security of persons purchasing property which may have been once fraudulently conveyed. The terms of the bankrupt act were very stringent. Where a person however innocent and unsuspecting purchased property from a person who was contemplating insolvency at the time, the bankrupt court would take the property from him and give it to creditors, on the ground that the purchaser was bound to take notice of a fact, that he in fact perhaps had no means whatever of knowing. It has been held universally that if the debtor in contemplation of bankruptcy convey to another, the conveyance may be set aside and the property be taken from the purchaser and transferred to the assignee. Perhaps he may have paid thousands of dollars for the property the money for which the corrupt bankrupt may have concealed,or given to his wife, or children, as hundreds have done; thus robbing the honest purchaser, who had no thought of wrong in any way. It is true that under the amended law it is necessary that the purchaser should have actual knowledge of the fraud, but it was not so under the law of 1867. Thus it was very necessary that a time should be positively fixed when it would be safe to purchase property; when no court could maintain a bill to set aside a conveyance. The original bill filed by the assignee, as copied in the bill of review (Page 51 Printed Record)states: that Charles D. Harvey was appointed assignee of Isaac Fitzgerrel a bankrupt on the day of 1871 &c. and on the day of A. D., 187 did receive from the said Weldon an assignment of all the estate botn real and personal &c. That said Isaac Fitzgerrel before he became a bankrupt that is to say, on or about the 30th day of December A. D. 1867 was the owner &c.; that thereafter on the same day and year &c.the bill charges, he put his property out of his hands to hinder and delay his creditors. (Page 52 of Record.) Now from this allegation it appears that the fraudulent conveyance was made December 30, 1867, and the original bill was filed March 20, 1872, four years and three months after the cause of action accrued. The answer, which is under oath alleges (Page 56 Printed Record) that respondent did purchase the property described December 31, 1867; that he held the property and sold

the goods until April 18, 1863, when a petition in bankruptcy was filed against Fitzgerrel, and he, respondent, was enjoined from selling; that during the year 1868 the injunction was dissolved and the goods returned into the custody of respondent and he went on selling &c.; then in 1872 after all this, they come in and commence these proceedings which takes away all the property he had left and finds a judgment against him for nearly four thousand dollars. Is there not laches in the filing of this bill? The reason that the doetrine of laches is enforced in chancery is that stale claims may not be hunted up and pressed upon persons who had every reason to believe that everything was settled; that it was neither equitable, nor honorable when persons interested, had by their silence caused others to believe that litigation had ended, to suddenly revive the strife.

Now if it be true that it is a requirement of the bankrupt law that the bill should have been brought within two years from the time when the cause of action accrued, then the original bill should have been dismissed and it was erroneous to enter a decree thereon. As in this case, had the respondent Buffington, not a right to rely upon the security of the statute? Had he not a right, knowing that more than four years had elapsed since he purchased the property and knowing the law provided that all such suits must be brought within two years—to rest upon the law, and depend upon its protection? Was he required to appear at all, in answer to the summons? Had he not a right to say, the court will protect me? And should not the court have protected him, when the complainants bill on its face, showed so clearly the want of jurisdiction in the court to enforce the relief prayed? Suppose Buffington had not appeared at all,—would, or rather *should* a court of equity have entered a decree against him upon the allegations of the bill? The Supreme Court of the United States say in the case of Clark Jr. Assignee &c. vs. Iselin et. al. 21 Wallace 360, October Term, 1874, that to bring the case of a judgment and execution, or attachment against an insolvent debtor, within the bankrupt act, several things must concur one of which is; the debtor must have procured them within *six months* next prior to the filing of the petition in bankruptcy. Now if this was necessary in the one case before the court would have jurisdiction to adjudge the debtor a bankrupt, would it not also in the other case, where the language is so much stronger. "No suit at law, or in equity shall in any case be maintainable *by*, or against such assignee, or by, or *against* any person claiming an adverse interest &c. *in any court whatsoever* unless the same shall be brought within two years &c." What can be plainer than this? No exceptions are made as to married women, idiots, lunatics, or minor children as is usual in limitation laws. It seems to be a law protecting the property, not the persons; to be intended to keep the property secure from disturbance regardless of the owner. That if the conveyance was made over two years pre-

viously, it should not be attacked,—that the court should have no jurisdiction over it,—that if the court assumed jurisdiction over the person of the owner, it could not over the thing, because no court should maintain the action. Now it is a familiar rule that as soon as the court ascertains the fact that it has no jurisdiction over either the person, or over the subject matter, it should instantly cease to act. This fact then appearing in the bill, answer and in fact through all the proceedings; how could the court proceed to enter a decree? This is not a statute of limitations, because it is made in the act itself, which authorizes the proceeding to set aside a sale,—to be as necessary an ingredient, as that a fraudulent conveyance was made. It absolutely prohibits the maintainance of any suit for a moment, unless brought within two years from the time the cause of action accrued. When did the cause of action accrue? Of course when the act itself was done the cause accrued and the statute commenced to run, and after two years from that time the law granted absolute immunity from any and all attacks. But outside of any statute, and on the ground of equity and good conscience, and the distrust with which courts of Chancery look upon stale claims, we insist that this original bill should have been dismissed, and that it was error to grant the relief sought. An assignee in bankruptcy can not sue in the State or Federal courts after the lapse of two years from the time of the declaration and decree in bankruptcy, if the cause of action had then accrued to recover the property of the bankrupt. Comegys vs. McCall 11 Ala. 932. Harris vs. Collins 13 Ala. 387. Pike vs. Lowell 32 Maine 245. 2 Red. 245. In the case of Bradshaw vs. Klein 7 American Law Register Page 505. McDonald judge says, "I think the provision above cited from the 14th Section relates to the State statutes against fraudulent conveyances and to these only; and that the 35th Section of the Bankrupt Act has no reference to those statutes, but is only intended to reach frauds under the Bankrupt Act." Under any circumstances the statute of limitations has run against the bill, for the Statutes of Illinois limits the time within which the action may be brought to two years. Statutes of Illinois 1869. Gross Third Ed. Page 31, Sec. 2.

The fact that an assignee in bankruptcy did not discover his right to certain property of the bankrupt until after the expiration of two years from the time an action accrued to him therefor, does not remove the bar prescribed by the second section of the bankrupt act. Norton vs. De La Villebeuve. 1 Woods 163. In general an assignee in Bankruptcy under the act of 1841, can not sue to recover the property of the bankrupt after the lapse of two years from the declaration and decree, if the cause of action had then accrued. Hilliard on Bankruptcy 389. In the case of Carr. vs. Hilton 1 Curtis 230, the court held it sufficient for the assignee to declare that the fraud was kept concealed until within two years. "No suit at law or in equity is

in any case maintainable by or against the assignee, or by, or against any person claiming an adverse interest, touching the property and rights of property of the bankrupt, in any court whatsoever unless the same is brought within two years of the time the cause of action accrued. for or against such assignee. No right of action barred at the time such assignee is appointed is revived by such appointment." Bump on Bankruptcy 179.

The limitation of two years, prescribed by Sec. 2, applies to suits authorized by it; that is claims adverse to the bankrupt's title. Sedgwick vs. Casey 4 Bankr. Reg. 496. Re Krogman 5 Bankr. Reg. 116; Smith vs. Crawford 9 Bankr. Reg. 38. A bill in Equity against an assignee and the bankrupt in fraud of his creditors *must* be brought within two years from the time the cause of action accrued against the assignee. Freelander vs. Hollman 9 Bankr. Reg. 331. A creditor's bill for the purpose of setting aside fraudulent conveyances of the debtor is barred by the statute of limitations, unless it is averred in the bill that the fraud was not discovered till within four years before the bill was filed. Lott vs. De Graffenreid 10 Rich. Eq. 346. In the case of Harwood vs. R. R. Co. 17 Wall. 78, Mr. Justice Hunt says, "We are of opinion also that there has been too great a delay in initiating this suit, and that no sufficient excuse is given for it. * * * Without reference to any statute of limitations, the courts have adopted the principle that the delay which will defeat a recovery must depend upon the particular circumstances of each case." The same doctrine applied to this case at bar would certainly defeat it. There is no statute of limitations of any force in our admiralty, but the suit should be brought as soon as an opportunity is presented; and if it is not the delay will be fatal. Parsons on Maratime law 663. In Re The Key City 14 Wall. 653. The court will require the plaintiff to conform to stringent rules of pleading and evidence where a great lapse of time has intervened. Stears vs. Page 7, How. 819.

This statute whether it is a statute of limitations or not, is fatal to the case made by the assignee. No excuse is given for the failure to file the bill within two years from the time the cause of action accrued. No reason is attempted to be given accounting for the delay, or giving a reason why this bill was not sooner filed. Can the statute be entirely ignored and no regard paid to its express words? The assignee in this case was not even appointed until the two years and more, had expired. The action was barred before his appointment according to his own bill, and it could not be revived by his appointment. This was a matter of substance in his bill because the action could "in no case be maintained" after the expiration of the two years and his bill showed on its face this fact, and no attempt made to take it out of the statute. By all authorities this is a fatal defect, and the original bill containing this fatal defect, the decree should not have been rendered and the bill of review was

therefore properly filed.

The second ground of error relied upon is that the proper parties were not joined in the original bill. That the bankrupt Isaac Fitzgerrel should have been made a party defendant to the suit, as well as Buffington the grantee. We rely confidently upon this point being fatal to the decree in this cause. The decisions are uniform that in all cases where a fraudulent conveyance is charged to have been made, that the grantor is a proper and *necessary* party to the action. It is laid down as an elementary principle, that when a decision is made upon any particular subject matter, the rights of all persons whose interests are immediately connected with that decision, and affected by it, shall be provided for, as far as they reasonably may be. It is the constant aim of courts of equity to do complete justice, by deciding upon and settling the rights of all persons interested in the subject matter of the suit, so that future litigation may be prevented. Story's Eq. Pl. 72. Mitford's Eq. Pl. by Jeremy 161, 162, 163, 164. Daniels Ch. Pr. Vol. 1, 181 et. seq. Is the bankrupt interested in the subject matter of the litigation in this case? We suppose it will not be contended, that if, (as in this case,) after the payment of all indebtedness proved, there will be a large surplus, even from the judgment alone, without the sale of the large amount of real estate--that such surplus would belong to the bankrupt. And yet it is contended that he has no right to be present and see that he is not defrauded out of such surplus. If it is the province of a court of chancery to settle all rights justly and equitably without driving parties to a multiplicity of actions, then certainly in this case the bankrupt should be present and have a right to be heard as to his interest in the subject matter of the suit. We admit that for the collection of a mere debt, or in litigation of any kind with a debtor of the bankrupt that he is an unnecessary party, because the assignee in that case represents the bankrupt and is acting for him, and we maintain that this is as far as the rule or the authorities go. But here we have a different contest. Here the assignee does not act for the bankrupt, but is making a direct attack upon him. He charges him with *fraud*, with committing a criminal act under the bankrupt law. He charges him with a violation of Section 44 of the Bankrupt Act, which fixes a penalty of imprisonment in the penitentiary of not more than three years. And yet, with all these charges against him he has no opportunity to be heard. He has in addition made a warranty deed to real estate alleged in the bill to be worth much more than the consideration expressed, to-wit $7950,00 and which should he obtain his discharge in bankruptcy he will still be liable for, and yet without a chance to be heard. It certainly can not be the law, that a man shall be charged with fraud; accused of a crime, which would incarcerate him in the penitentiary for three years; placed in a condition of life long indebtedness upon his shoulders, and convict-

ed of all of these without a hearing. Is the assignee the representative of the bankrupt when he makes these charges? If so, it is a case of a person accusing himself of a crime, against his will, of a man taking up the burthen of a heavy debt upon his warranty in his deed; staining his name and character with charges of fraud; and all this, without a chance to show any defence; any mitigating circumstance; or other reasons that he might do, if made a party and given an opportunity to defend himself. Suppose he could show that his debts had all been paid, or compromised; that there was collusion between the assignee and his grantee to deprive him of his property; that there was, or would be a thousand dollars more or less due to him after payment of his indebtedness which he could save if given an opportunity; that the assignee was worthless and had given no bond and would squander any surplus that came into his hands; or a hundred other perfectly equitable, or legal defences to the proceedings which were not within the knowledge of his grantee, or in which he had no interest. It is held by the courts that have decided the question at all; that the bankrupt is not a necessary party in general suits *because* the assignee is his representative and is acting for him. This reason of course can only apply to other matters than where a charge of fraud is made against the bankrupt himself, because under no view of the case and under no circumstances can the assignee be said to be acting for the bankrupt when a charge of fraud is made against him. In such case the assignee is acting only for the creditors and antagonistic to the bankrupt. In that case the assignee ceases to act in his dual capacity, which in all other cases he occupies, and acts for one party and against the other. In all cases we have examined where creditors bills are brought to set aside conveyances as being in fraud of creditors, it has been held that the grantor is not only a proper party but a *necessary* party to the suit. In the case of Spear vs. Campbell et. al. 4 Scam. 424, which was a bill brought by judgment creditors to set aside a conveyance of real estate alleged to be made without a valuable consideration and for the fraudulent purpose of avoiding the payment of his debts,—the court say, "Was the judgment debtor a necessary party? We think he was. The payment of judgments recovered against him was sought to be enforced out of property which he had conveyed with covenants of title, apparently for a valuable consideration, and without fraud or collusion. He ought under such circumstances, to have an opportunity of showing that the judgments have been paid, or otherwise discharged. He should be permitted to contest the right of the complainants to the peculiar remedy they were pursuing. He might be interested in sustaining the conveyance which he had made and he certainly should be allowed the privilege of insisting and proving that it was made in good faith, for a valuable consideration and without any design to defraud the complainants or hinder, or delay

them in the collection of their debts. A decree invalidating his conveyance might result in an eviction of his grantee, who would turn upon him and seek to make him liable for the failure of the title. Such a decree, made in a proceeding to which he was not in any manner a party, and of which he had no notice, actual, or constructive, might be productive of gross and glaring injustice. *In every point of view, we are clearly of the opinion that the judgment debtor was not only a necessary, but an indispensible party.*"

Can language be stronger than this? Or can the application be more appropriate to the facts than in this case? There is no allegation in the record in this case that the indebtedness of the bankrupt was not all paid up before the suit. Had he not the right to show that there was no fraud in the transaction, and to clear himself from the stain and charge cast upon him by the bill? Had he not a right to set up and rely upon the lapse of time from the time when the cause of action accrued? Had he not a right to set up and rely upon any of the other many legal, or equitable defences that could have been made showing that the complainant ought not to maintain his bill? A decree such as this was made would naturally evict his grantee and he could at once be sued on his warranty, and this decree produced in evidence to sustain the action, The charge is made that he has violated Section 44 of the act, for this charge is made throughout the original bill, and he is incarcerated in jail, or the penitentiary for three years and the decree in this cause is produced as evidence of the fact; and all this is done while his mouth is closed, his hands tied, and he is helpless to defend himself. Such a doctrine is not the boasted justice of a court of chancery, a court of conscience whose "constant aim it is to do complete justice by deciding upon and settling the rights of all persons interested in the subject matter of the suit, so as to make the performance of the order of the court perfectly safe to those who are compelled to obey it and to prevent future litigation." Lord Redesdale in Mitford's Eq. Pl. 133. Then again in this case under the decisions of the bankrupt courts, if the conveyance is set aside the homestead of the bankrupt is revived in the property. In re Detert. Krekel Judge Dist. Ct. W. Dist. Mo. Chicago Legal News January 16, 1875, Page 130. Cox vs. Wilder: 2 Dill. C. C. 45. Voegler vs. Montgomery 54 Mo. 577. McFarland vs. Goodman 13 Am. Law, Reg. 697. Newman et. al. vs. Willetts 52 Ills. 98. But if he is not made a party to the suit how can he rely upon, or set up his homestead. In this case the evidence shows that the bankrupt is living upon Lot 19 in Fairfield as his residence. Perhaps he has a homestead as in fact he has, but he has no opportunity of setting it up, and the court has went on and made a decree that it shall be assets in the hands of the assignee to be sold for the benefit of the creditors of the bankrupt. It may be said that the bankrupt may petition the District court and have his home-

stead set off. But this makes litigation, which it is the object and aim of a court of chancery to avoid. In Adams' Equity Page 315, it is said the interests which require a joinder of parties are—"First, interests in the subject matter which the decree may affect, and for the protection of which the owners are joined; Secondly, concurrent claims with the plaintiff, which, if not bound by the decree, may be afterwards litigated; and, thirdly, liability to exonerate the defendant, or to contribute with him to the plaintiff's claim." Under the first of these requirements comes the claim of homestead. The bankrupt having an interest in the subject matter, to-wit: the real estate sought to be divested from the defendant, and which if done as we have seen immediately reinvesting the bankrupt with a homestead right therein which is certainly an interest in the subject matter. The laws of the State of Illinois make a homestead in real estate carry the fee interest. A judgment against the person creates no incumbrance upon it, makes no lien against it, and the holder can sell the land free and clear of any interference, and do what he pleases with the proceeds for one year after the conveyance. It has no more effect on the homestead than if no judgment had ever been rendered, and he who has a homestead is above, and out of reach of the effect of any law so far as the homestead is concerned. Conklin vs. Foster 57 Ills. 104. Walsh vs. Horine 36 Ills. 238. White vs. Clark 36 Ills. 285. Green vs. Marks 25, Ills. 221. Bonnell vs. Smith 53. Ills. 375. Wiggins vs. Chance 54, Ills. 175. Then in this case the deed from the bankrupt to the defendant Buffington having been set aside the homestead right was immediately reinvested in the bankrupt, but he, not being a party to the suit could not claim the homestead, and thus one of the leading grounds and aims of chancery jurisdiction—the avoidance of a multiplicity of suits, is thrown away. It can not be said by the complainant in the original bill, that the right of the bankrupt was only contingent, and that he having no right of homestead at the institution of the suit, he was not therefore a necessary party—for the very object contemplated by the suit would necessarily reinvest him with this homestead right, and the very statements of the bill itself, showed that said right existed. But the reasons given for holding that the homestead exists in the bankrupt is, that the homestead right never was divested by the conveyance. A fraudulent conveyance being void conveys no interest, and therefore in this case, the bankrupt having made a fraudulent conveyance to the defendant Buffington, as alleged in the original bill, and such conveyance being void, the homestead was not thereby conveyed and still existed in Fitzgerrel the bankrupt. But the bill was filed to set aside this conveyance and it was adjudged by the decree of a court of competent jurisdiction that it was void. The bill alleges that the possession never was delivered; that Fitzgerrel still holds it, (Page 52 of Record) and that Buffington never took possession of any

part of the land. Does not this state of facts alleged by complainant himself, show Fitzgerrel to have a deep interest in the subject matter of the suit and therefore under the authority of all the text books upon the subject, he was an indispensible party. It has always been the practice in Illinois, in all suits in chancery and at law affecting real estate, to make all persons in possession of the land at the commencement of the suit defendants, and if not so made defendants they can afterwards bring suit to establish their rights, and no decree can conclude them, and for this reason they become necessary parties and no decree can be complete without them. Again ; The bankrupt in this case comes under the third ground of interest laid down by Mr. Adams which makes him a necessary party, to-wit: "Liability to exonerate the defendant, or contribute with him to the plaintiff's claim." The conveyance from Fitzgerrel to Buffington being by warranty deed, the bankrupt would be compelled to repay him the amount of the consideration for the warranty, and the discharge in bankruptcy would be no defence thereto ; because no claim for the amount could be presented to the bankrupt court, the claim having arisen since the act of bankruptcy, and the amount thereof would have to be afterwards paid, or the bankrupt be forever held under the thralldom thereof. He then would unquestionably be compelled to exonerate the defendant for the amount that he had paid for the land in any event. Under then, two out of the three rules wherein persons become necessary parties under the doctrine laid down by Mr. Adams, the bankrupt in this case comes. But there is another and it seems to us an unanswerable reason why he must have been made a party, and that is, that the bankrupt law refuses a discharge to the bankrupt,where a conveyance has been made in fraud of the act. In this case if Mr. Fitzgerrel the bankrupt should apply for a discharge from bankruptcy, he would be met at once by the decree in this case finding that he had made a fraudulent conveyance of his property. And then we would have in this enlightened age, a case where a man had been condemned without an opportunity of being heard. His discharge would be refused upon a finding of a court wherein he was not consulted ; had no hearing ; his defence not made ; no day in court ; deprived of the great and inalienable right of a trial by jury ; and compelled to suffer for the negligence, or fault of others, without a chance to defend himself. This cannot be the law. If any person could possibly have an interest in the subject matter of this suit,it would be the bankrupt who has to suffer all the consequences of a successful termination of the suit on the part of the complainant.

In Story's Equity Pleadings the doctrine is emphatically enunciated, that "Courts of Equity adopt two leading principles for determining the proper parties to a suit. One of them is a principle, admitted in all courts upon question affecting the suitor's person and liberty as well as his property, namely, that

the rights of no man shall be finally decided in a court of justice, unless he himself is present, or at least unless he has had a full opportunity to appear and vindicate his rights. The other is, that when a decision is made upon any particular subject matter, the rights of all persons, whose interests are immediately connected with that decision, and affected by it, shall be provided for, as far as they reasonably may be." Story's Eq. Pl. § 72. Caldwell vs. Taggart, 4 Peters, 190. West vs. Randall 2 Mason, 190, 196. Is not a discharge from bankruptcy a *right*, and is the bankrupt deprived of this *right* by this decree? Unquestionably the decree would be produced in evidence against him, and in any event it would go to the world at large as a fact found and decreed by the court, that he had been guilty of fraud. In the case of Mechanics Bank of Alexandria vs. Seaton et. al., 1 Peters 299, this court has decided the same principles above laid down and have there held, that when a bill is brought for relief all persons materially interested in the result of the suit, or the *subject-matter* thereof must be made parties. In the case of Lovejoy vs. Irelan 17 Maryland 525, the court in a well considered opinion held. "It has always been the practice in this state to make the grantor in an alleged fraudulent conveyance a party defendant, and we consider the law well settled that he is a necessary party as well on account of the fraud charged, as because of the title remaining in him for the benefit of creditors." In a bill to set aside a fraudulent conveyance as being made without consideration and in fraud of creditors, the alleged fraudulent grantor is a necessary defendant in the bill." Gaylords vs. Kelshaw et. al. 1 Wallace 81. Sewell vs. Russell, 2, Paige 175. "In an action to reach real property fraudulently disposed of by the debtor, the debtor is a necessary party to the bill, in the absence of all excuse for the omission." Beardsley Scythe Co. vs. Foster 37 N. Y. 566. "In a creditors suit against a judgment debtor to set aside a prior assignment made in trust by him for the benefit of creditors on the ground of fraud he is a necessary party. Indeed he must be deemed the principal party. The common point of litigation is the alleged fraudulent transfer of the property." Lawrence vs. Bank of the Republic, 35 N. Y. 324. Fellows vs. Fellows et. al. 4 Cowen 682. "If the debtor is dead his Administrator should be made a party. A person through whom the title has passed from the debtor to the grantee is a proper party." Bennett vs. McGuire 58 Barb. 645. "In a creditors bill the husband of the defendant must be made a party *although he has been declared a bankrupt.*" Hamlin vs. Bridge 24 Maine 145. "It is certain that if there remain notwithstanding the assignment, any *interest, right, or liability* in the assignor, which can be affected by the decree, a *scintilla juris* even, there he is a proper and in most instances a necessary party." Thompson et. al. vs. McDonald et. al. 2 Dev. & Bat. 463. The debtor is a necessary party, for it

is his debt that is sought to be collected, and his fraudulent conduct that is sought to be investigated. Vattier vs. Hinde 7 Peters 252. Story vs. Livingston 13 Peters 259. Van Reinsdyk vs. Kane 1 Gall. 371, 630—9 Cranch 153. West vs. Randall 2 Mason 181. Joy vs. Writz 1 Wash. C. C. 517. Piatt vs. Oliver 2 McLean 267. Northern Ind. R. R. Co. vs. Mich. Cen. R. R. 5 McLean 444. Hopkins vs. Hopkins 4 Strob. Eq. 207. Vallette vs. Whitewater Valley Canal Co. 4 McLean 192. Hammond vs. Hudson R. Co. 20 Barb. 378. Shaver vs. Brainard 29 Barb. 25. Allison vs. Weller 6 N. Y. Sup. 291. Miller vs Hall 40 N. Y. 262. Wallace vs. Eaton 5 How. Pr. 99. These cases all hold universally, and without a single exception, that in all suits alleging a fraudulent conveyance that the grantor is a necessary party to the suit. No case can be found where the contrary doctrine is held. Now, is it not as necessary that he should be made a party where his assignee in bakkruptcy brings a suit to set aside a fraudulent conveyance? In *all* cases in bankruptcy the assignee represents the creditors and this then *is* a suit by the creditors in a body, by their legal representative the assignee, to set aside a fraudulent conveyance. And, why is he not just as necessary a party in one case as the other? It is his debt that is to be collected, his fraud that is to be investigated in one case as in the other, and in fact the consequences of a discovery of fraud in the present case are much graver than in the other. Then why should he not be as necessary a party in the one case as in the other? They are entirely analogous it seems to us, and the same reasons apply in one as in the other. The only reason given, or that can be given, why they should differ is the fictitious one, and has neither reason nor common sense to back it, that the assignee represents the bankrupt. The different states have almost universally abolished fictions and now try their causes sensibly. John Doe and Richard Roe have departed this life after several centuries of litigation, and the age of reason in law appears to have dawned, and it should be time that such a rediculous fancy, that an assignee is *representing* a man whom he charges with all kinds of fraud and villiany, is done away with. Why, he attacks every act the bankrupt has done. He charges that he has been combining and confederating with others to defraud his honest creditors. He has been corruptly secreting and covering up his property to keep from paying his honest debts. He has been making fraudulent and fictitious sales to defeat the operation of the bankrupt law. And generally, he has been guilty of doing every rascally and villianous act possible for man to do, as is usually alleged in all these creditors and assignees bills. And yet, it is claimed that in such case such assignee is representing in doing all this, the man upon whom the attack is made, and for this reason he should have no right to defend himself; that the assignee will defend and protect his rights. Is such protection given? Is it the duty of the assignee to give

such protection! The fact is, the assignee labors all in his power to, in any way, overturn and destroy the conveyance. He seeks the interest of the bankrupt! Why every energy is bent towards setting aside the act of the bankrupt and rendering void his deliberate act. It is the interest of the creditors to do this, and if it be true, or whether true or false, it is the interest of the bankrupt to sustain it. If it was in fact fraudulently made, the maker had some interest, pecuniarily, or otherwise in making it. If it was honestly made he certainly had an interest both moral and pecuniary in sustaining it. Then the interests of the creditors and the bankrupt are necessarily antagonistic. That the assignee stands indifferent and disinterested between these two parties is *absurd*. In the first place he has made these charges against the bankrupt. His fees and emoluments depend in a great measure upon setting aside the conveyance. Because the land will come into his hands in that event, will be sold, the money will come through his fingers, and for many and various reasons he will seek to sustain his bill, while there is no single reason why he should aid the bankrupt to defeat it. That the bankrupt is *civiliter mortuis* so far as the collection of debts due him is concerned is true, and that the assignee acts for him in such collections is also true; because there, their interests are in fact as well as in theory identical. The assignee desires to collect as much as possible for the creditors, and the bankrupt has therein the same desire, because he can obtain no benefit otherwise, and the natural desire of men to do what is right where he is not otherwise interested, will make *his* interest, identical with that of the assignee. Therefore we are forced to the conclusion, beyond controversy; that if the debtor is a necessary party to a bill filed by his creditors, that he is also a necessary party to a bill filed by his assignee in bankruptcy; for the same—and even greater reasons apply to the bankrupt than do to an assignor in the other case, the reason of a refusal to grant him a discharge if he has fraudulently transferred his property. The reason that he may be punished criminally under Section 44 of the act of 1867, under which this case comes; the reason that his homestead is to be transferred away from him are all additional, to the reason which makes him a necessary party where a bill is filed by creditors, and which certainly make the necessity greater, why he should be made a party when a bankrupt. It may be asked in this cause, what good it will do, and what benefit will accrue to the appellant, if the bankrupt had been made a party defendant? We answer that the bankrupt could, if he had been made defendant, have readily and easily defeated this action by interposing defences thereto which were unknown to appellant. Defences growing out of the bankruptcy proceedings which appellant was not a party to, and had no knowledge of. Appellant had no knowledge of the fact as to whether appellee was assigee, or not; no knowl-

edge as to whether bankruptcy proceedings had been instituted, or not, any farther than the records showed him; no knowledge as to whether the indebtedness of the bankrupt (if he was one) had been extinguished, or not; no knowledge of many other things which would easily have defeated this action, legally and equitably, if he had been cognizant of them. But he was taken, a stranger to all former proceedings in the matter, except that four years before the time when this suit was commenced he had been enjoined from selling the property which he had purchased from Fitzgerrel; that soon afterwards the injunction was dissolved, and he was directed to proceed and do as he saw fit with the property. Then this suit, four years after this occurred, was commenced against him; he had no knowledge whatever of the intermediate proceedings. He made no defence except alleging the innocence of the original transfer; he knew nothing else. The bankrupt law made him guilty if he bought the property of an insolvent, or a person contemplating insolvency, no matter how innocent of any wrong he might be, and the decree went against him on this ground. Had Fitzgerrel, his grantor, been made a party with him how different would have been the result?

But we are not entirely without authority on this point, although the question seems to have never been directly decided by the highest courts anywhere, and if intimated in any case, it seems to be more as an *obiter dicta* than a studied decision. In practice both courses seem to have been adopted. In some cases, the bankrupt having been made a party defendant with the grantee and in others not. In the case of Massey et. al. vs. Allen. Reported in 17 Wallace 351 the bankrupt was made a defendant, but no question raised as to parties. See Boone vs. Hall 7 Bush. 66, and hundreds of other cases, where they have been made parties and perhaps as many others where they have not. In the case of Verselius vs. Verselius 9 Blatch. 179 being a bill to set aside a fraudulent conveyance by the assignee of a bankrupt it was held that the Bankrupt was a proper party defendant. So also in Sharpe vs. Gamon 2 Vernon 32. Our law is different from the English in respect to cases of bankruptcy, for in our law a homestead exists in the real estate to the bankrupt; in theirs it does not. In the English law the whole interest of the bankrupt passes to the assignee without any reservation. In Comyn's Dig. Tit. Chancery E. 2 however, it is said: "All concerned in the demand ought to be made parties and therefore, if there be a bill against the executor of one obligor for discovery of assetts all the obligors should be joined &c." "If you draw the jurisdiction out of a court of law, you must have all parties before the court who are necessary to make the determination complete, and to quiet the possession." Ibid. "All parties having an apparent right, must be brought into court before the court will do anything which may affect their right." Lord Thurlow in Anon. 1 Vesey Jr. 29. "As

far as it is possible, the court endeavors to make a complete decree, that shall embrace the whole subject and determine the rights of all parties interested in the estate." Palk vs. Clinton 12 Vesey 58. It is also universally held, that where the fraudulent grantor remains in the possession of the property after the conveyance, he is simply a trustee holding it in trust for the creditors and grantee. In every case, it is held that the trustee in possession must be made a party defendant. In this case the bankrupt remained in the sole possession of the property. He was therefore an indispensible party to the suit. Hill on Trustee 519. Alexander vs. Mullins 2 R. & M. 568. Munch vs. Cockerell 8 Sim. 219, 231.

The suit in this case, was also drawn out of a court of law, the bankrupt court being to all intents and purposes a court of law, aud having been drawn from the court of law into this court, as is said in Comyn's Dig. *Supra.* "You must have all parties before the court who are necessary to make the determination complete, and *to quiet the possession.*" Now this decree, if submitted to, would not quiet the possession. How is it known by what right Fitzgerrel holds the possession? He has had no opportunity of setting up his claim if he has any. It is not known how, or why he is in possession. He may have a right from the creditors, or some claim in the land, by homestead right, or otherwise, by which he could hold it even against his assignee. Had he been made a defendant he would have been compelled to set up and defend his possession, and his right thereto and the possession would have been quieted. Is it not naturally to be supposed that after the lapse of five years after the conveyance has been made, and the bankrupt now founed in possession, that he has some claim, or right therein by which he could, or will claim to hold the land. Suppose that he had in the mean time obtained a tax, or some other title,acquired through his earnings since he become a bankrupt? He could hold the land thereby even against the assignee, but he can not set up his defence because he is not a party to the suit. There might be some ground for claiming that he could have no claim, if his bankruptcy had been recent, but here is nearly five years elapsed since he became a bankrupt. It seems the property and the whole matter was neglected all this time. Fitzgerrel was an involuntary bankrupt. All his feelings and desires were naturally antagonistic to the attempt to take this property from his grantee and to prevent him from collecting his notes. What more likely then than that all this property was sold for tax; that Fitzgerrel had purchased it at the sale, or had it done, and was then in possession under his tax title? If so would he not be a necessary party? and what is there to show that this was not the fact? As indeed we understand it to be the fact? The land lying without an apparent owner for four years and over: Fitzgerrel in possession. What more natural than that he would apply his earnings towards acquir-

ing a tax title against the land. He would have a right to do this legally, and it would protect him against loss by reason of his warranty of the title to Buffington, if he could procure a title to the land that would defeat adverse claimants. Had reasonable dilligence been exercised by the assignee this couldnot have occurred, but this was not the fault of Buffington, or Fitzgerrel. If it be the rule that the assignee represents the bankrupt it is only in matters done preceding the bankruptcy. Supposeit was ten years, or twenty years after the bankruptcy and the bankrupt was in possession, and this bill was filed, would he not be a necessary party?

But there is still another reason why Fitzgerrel was a necessary party to this proceeding. The original bill in this cause filed is a bill of discovery. The bill prays, (Page 53 of record) "To the end, therefore, that the said defendant, if he can show why your orator should not have the relief hereby prayed, and may upon his corporal oath, and according to the best and uttermost of his knowledge, remembrance, belief and information, full, true, direct, and perfect answer make to all and singular the matters hereinbefore stated and charged, as fully as if the same were hereinafter repeated &c., * * * * and that said defendant may be required to give a fair and just value of said personal property and for the use of the same upon a fair accounting &c." Now, this part of the original bill is purely a a bill requiring a discovery of these matters, and therefore the grantor must be made a party to the bill. It is a bill in aid of the proceedings in the bankruptcy court, and prays for the discovery of these facts, and then for relief upon them. Story's Eq. Pl. § 312, et. seq. This bill is in its nature a bill filed in the circuit court in aid of the proceedings in the bankrupt court,and it would be absurd to say, that a discovery could lie against a party not connected with the proceedings in the other court. Is it possible that while proceedings are pending in involuntary bankruptcy in the District court, that the assignee can quietly go into the Circuit court, file his bill there without any notice to the bankrupt, or his counsel have discovery made of all his transactions, and then come into the District court again with his decrees and orders of the circuit court and use them against him, made without his knowledge? If this had been a bill for discovery alone without praying for relief, Fitzgerrel alone would have been the proper party, but having mixed the bill with such a prayer, both Buffington and Fitzgerrel become proper parties. Fitzgerrel, because it was his acts and transactions that was prayed to be discovered and Buffington, because it was of him relief was asked. In the English practice a bill can not be filed for discovery and also pray for relief, but in the American practice it is not considered improper. Story's Eq. Pl. § 312. That this bill is in its nature and character a bill of discovery and for relief can not be controverted, for it comes within the rule laid down by Judge Story in his Equity Pleadings

§ 311 et. seq. where he says: "The bill is commonly used in aid of the jurisdiction of some court of law, to enable the party, who prosecutes, or defends an action at law to obtain a discovery of the facts, which are material to the prosecution, or defence thereof." This he says of a bill purely for discovery, and in Section 569, he says, that the parties to the bill purely for discovery must be the parties to the action at law. Now, why is it permitted to the assignee to bring his bill in the Circuit Court in bankruptcy proceedings as a court of Equity, where the suit is brought by, or against any person claiming an adverse interest? It is because the bankruptcy court, being a court of law simply, can not reach the property. Therefore a court of Equity is resorted to by the assignee for discovery and relief, so that he may proceed and administer the property in the bankruptcy court, when discovery of the property is made and relief granted him, by placing it into his hands, through a court of equity. The very decree granted in this case fixes the character which the court below placed upon the proceedings. It found from the discovery that the conveyance of all the property was fraudulent; that so much money had been received from property disposed of; and placed the property in the hands of the assignee without making any further order. The court simply discovered the property, and then quietly left it to the court of law to dispose of What in fact, else was the court authorized to do? The bill prayed that true answers should be made to the charges made in the bill; that the amount of money received should be divulged; that a fair accounting should be made for the use of the premises; that he should give a fair and just value to the personal property received; and the only relief prayed for was, that the conveyance should be set aside as null and void; and that the property become assets of the bankrupt's estate. The relief granted was the order, that the conveyance should be set aside, vacated and annulled and that the defendant deliver up and surrender possession of said lands to the complainant, or his duly authorized agent, and that defendant pay the sum of money found due &c. Now, what was the principal and leading object of this bill? It was beyond a question the discovery of the property. Although the word discovery is not used, still no one can doubt what was the meaning. The defendant was required to swear to his answer and the record shows that he filed three answers before he satisfied the complainant and the court, that he had made fair, full, and complete answers to the interrogatories put to him and charges made against him in the bill. The object, and the sole and only object, of the bill was to discover and lay bare the title to the property, so that the court of bankruptcy might take hold of it, and make disposition thereof according to the bankrupt law. But, is it possible that this could be done without the knowledge of the only person interested in the bankrupt court? Is it possible that the defendant in a court of law, reposing

quietly upon his legal rights, should be flanked by a decree of a court of chancery at the other end of the line, of which he had never even heard? That his attorneys who were standing in the court of bankruptcy waiting to proceed and settle up the bankruptcy proceeding, should be met by a decree of another court changing the whole course of the proceedings, without any knowledge or notice to them, or their client, is simply ridiculous. Or suppose that at the end of two years, more or less, of proceedings in bankruptcy, the bankrupt applies for and receives his discharge. The assignee, (who was his assignee during the bankruptcy proceedings) files a bill in the circuit court against the grantee of his property, without the knowledge of the bankrupt and proceeds to a final hearing and decree, and sells the land under the decree; thus entangling the title to the property. How easily might all this be done, when the bankrupt is not required to be made a party to the proceedings? How is it known from any of the proceedings in this cause from the beginning to the end, that the bankrupt had not received his discharge years before this bill was filed? It is true he might have learned this fact by examining the records of the District court, but was he required to do this? How is it known that the bankrupt had not paid every debt he owed years before? He was not required to make a record of this fact. He might have receipts from every creditor in his pocket and the defendant here be none the wiser. It is true he might have hunted the bankrupt up and endeavored to ascertain the fact, but in the meantime the bankrupt may not have been accessible to him.

Adams says in his work on equity page 314: "If the bill be for discovery alone, in aid of proceedings at law, no person can be made a defendant who is not a party to the record at law," referring to the case of Kerr vs. Rew. 5 M. & C. 154. In this case, if this bill had been filed for the discovery of the property alone, Fitzgerrel would have been the only proper party; but, in addition, the bill praying that the deed be set aside, and also praying that the rents received since the conveyance be discovered,—then Buffington became a necessary party for these purposes, because he held the legal title to the lands. In Story's Eq. Juris. § 1481, it is said: "In a general sense, courts of equity may be said to be assistant to other courts in a variety of cases, in which the administration of justice could not be otherwise usefully, or successfully attained, * * * such as by preventing a trustee, lessee, or mortgagee, from setting up an outstanding term, to defeat an ejectment brought to try a title to land, or as assistants to other courts by rendering their judgment effectual; as by setting aside fraudulent conveyances which interfere with them; by providing for the safety of property pending litigation; and by suppressing multiplicity of suits and oppressive actions. And for the proper carrying out of this province of the court of equity, bills of discovery

may be filed to aid such courts of law." §§ 1482, 1483, 1484 et. seq. Then in view of the fact that this bill is, to a great extent at least, a bill of discovery; is it possible that one of the principal parties to the act charged to have been fraudulent need not be made a party, while the other is? Such a rule would at least be inequitable and unfair to the one who was made a party. But a bill of discovery must have the parties to the proceeding at law made parties to the bill, because the discovery can not be binding otherwise. Is it possible that the complainant in the bill can commence a suit against another person than the defendant in the suit at law, obtain discovery from him and then bring that discovery in and use it in the proceedings at law? It is true that this proceeding is somewhat anomalous and is based upon the statute. But the statute simply gives the jurisdiction to the Circuit Court, and the proceedings thereafter must progress as other cases in chancery. There is nothing in the law authorizing any departure from the usual course of chancery practice in this case. The law simply allows an assignee of a bankrupt to file a bill in the Circuit Court to set aside a fraudulent conveyance made by his bankrupt. Now, what is the character of the bill he must file? It must be a bill in the nature of a bill of discovery and for relief. He must discover the facts which constitute the fraudulent conveyance and then when that is done, he must pray to be relieved therefrom. How will he discover the facts then, which constitute the fraudulent conveyance? Is the bankrupt, by reason of his bankruptcy *dead*, as to his being capable of stating facts? Is he so *civiliter mortuis* that he can not answer the truth as to whether his acts were fraudulent, or not? It is ridiculous to allege such reasons as this. It is perfectly correct and sensible to urge that the bankrupt has no control over property that has passed into the hands of his assignee by reason of his bankruptcy. That as to this property he is dead. Because the law turns all of this property into the hands of the assignee for the benefit of the creditors. But here is a suit instituted to inquire into and ascertain whether this property belongs to the assignee or not. This is a fact which is now being sought for; and it is being sought for by a bill of discovery. Is it just or reasonable to say then, that the bankrupt, the man who committed the fraud; the man who contemplated and carried out the fraudulent act; who was guilty of the violation of the law and who knew all the minutia of the transaction, should be left out, and his innocent grantee brought in, and an apparent case made against him? Under the construction of the bankrupt law as given it by the bankruptcy courts Section 35 of the law of 1867, was made very stringent upon purchasers of property from one, who afterwards failed to pay his indebtedness for the space of fourteen days. If a person purchased all the property of one who afterwards became a bankrupt, this was held to be *prima facie* evidence of fraud in the purchaser, or if he purchased property out of the

usual course of trade, or if the vendor was insolvent at the time, or contemplating insolvency, then and in all of these cases and many more the transaction was held to be fraudulent; although at the time the purchaser had no knowledge, or suspicion that the vendor was conveying all his property, or that he was conveying property out of the usual course of his business, or that he was insolvent, or contemplating insolvency. Of all these things the purchaser might well be innocent, yet the courts would hold him guilty anyhow, and would take the property from him. In fact in this case the evidence of several business men of his own town, was taken showing that they had no suspicion that the bankrupt owed a dollar. If the bankrupt had been made a party to these proceedings then, he would have had an opportunity of alleging his reasons for the transaction and his explanations of the apparent fraud in the sale which the purchaser could not do. He might have alleged if he had, had an opportunity, that all these debts which the assignee represented had been made after the conveyance and before the bankruptcy; that at the time the conveyance was made, that he was not indebted at all, or that whatever indebtedness he had then, was paid off before the bankruptcy proceedings were instituted; that he had plenty of other property left to pay all his indebtedness when he made the conveyance; that he sold this property for the purpose of getting money to pay his indebtedness; that this conveyance was made more than six months before the bankruptcy proceedings were commenced; or that his motives in many ways were honest and that no fraud was intended. How many defences could lawfully be made to this action had the leading actor therein been given an opportunity to show them, and what defence could the grantee make? He simply could allege his innocence in the transaction and nothing else. He had no knowledge and no means of knowing what defences to the fraud the leading actor therein had. He was the passive instrument, if a fraud was actually perpetrated, and if none was intended he had no means of showing it, because the knowledge of the facts did not exist in him, but with the one who committed the fraud or did the act. It is commonly held that unless both parties to the conveyance intend to commit a fraud the conveyance will not be set aside; but it is held otherwise in bankruptcy. There a fraud upon the act may be committed when the grantee is perfectly innocent of any fraudulent intention, because the law itself states what shall be a fraud, whether the parties intend it. or not. Now, is it just that the purchaser alone shall be made defendant and discovery alone be obtained from him without the means of compelling the other party to give his reasons for the acts charged? Although the other party may easily give ample reasons for the conveyance which will take the case out of the bankrupt act, or advance defences which will at once defeat the action and which are solely within his own knowledge. If this be true,

bankrupts will be left out intentionally. Assignees will combine with the bankrupt, will leave him out of the suit entirely, and thus place it out of the reach of the bankrupt to show cause for the acts which apparently give grounds for the suit. How can the purchaser allege, or show in his defence in this suit, that Fitzgerrel had other property left amply sufficient to pay his debts when this conveyance was made; that the debts upon which he was declared a bankrupt were acquired after the conveyance; that the conveyance was not made out of his usual course of business; that it was on his part a *bona fide* transaction; or any of the other numerous defences which he might have made? All these things were within the knowledge of the bankrupt alone. With them the appellant would have defeated this action, without it, he was defeated. He would not be allowed to answer these things because they were peculiar to the bankrupt alone and were personal defences to him, nor if proven would they have protected him. It would probably be true, that if the charges in the bill in this case had alleged wrongs, and frauds on the part of Appellant alone, and had asked discovery of his acts alone, that on this ground, the bankrupt might not have been a necessary party. But in this bill the principal charges of fraud are made against Fitzgerrel, and discovery of Fitzgerrel's acts alone are prayed. How Buffington can answer these, is more than we can discover. He does not know Fitzgerrel's mind, nor is he able to make discovery of his acts. Yet the charges are, what Fitzgerrel did, and inquiry made as to what money Fizgerrel received. It is for this reason that we now complain. That an undue advantage was taken of Buffington and things required of him which was utterly impossible for him to comply with. When it is alleged in the bill that Fitzgerrel contemplated a fraud upon the bankrupt act, that he combined and confederated with others to commit a fraud; that he had received money and never accounted for it; paid out money and never charged it; and in short, all the other charges and allegations made in the bill; what could Buffington answer? Fitzgerrel was *the party*; Buffington only a nominal one. In the case of Weise vs. Wardel Law Reports 19, Eq. 171, the English Court Sir. G. Jessel Master of the Rolls, holds, that the bankrupt is not a necessary party and gives the following reason: "The charge is that the bakrupt has conveyed away part of his property so as to defeat, or delay his creditors. Now, in respect of that property he has no interest, nor is he under any personal liability; why then is he made a defendant?" The very basis of his reason in this case shows that it does not apply to our bankrupt law, or our laws in regard to conveyances. For under our law there is both a pecuniary and personal liability upon the bankrupt. He is liable to a criminal prosecution under the 44th Section of the bankrupt law providing that for the act charged in the bill in this case the bankrupt "shall be deemed guilty of a misde-

meanor, and upon conviction thereof in any court of the United States, shall be punished by imprisonment, with, or without hard labor, for a term not exceeding three years," besides the loss of his discharge in bankruptcy, and a pecuniary liability by reason of the warranty in the deed. These liabilities do not exist in the English law of conveyances, nor in the English bankrupt law, so that the reason of the decision of the Master of the Rolls does not exist in this case, and the decision in the case of Verselius vs. Verselius 9 Blatchford 189 hertofore referred to, is based on this difference in the different laws of the two countries. The bankrupt has also a homestead in America which he has a right to claim and hold in case the conveyance is set aside and has thus, a double pecuniary interest in the result of the suit which does not exist under the English law of conveyances. In the case of Lloyd et. al. vs. Landers et. al. 5 Maddocks Chy. rep. 282, referred to in the case of Weise vs. Wardel. Supra; the Vice-Chancellor in deciding a demurrer, in a case where the mortgagee brought suit for foreclosure against the bankrupt and his assignee, the demurrer being filed by the bankrupt alleging that he had no interest in the result of the suit, says: "The only question is whether in case the plaintiff obtains a decree of foreclosure against the assignee alone, it can prejudice the plaintiff that the bankrupt was not made a party to the suit. * * * * After a mortgage in fee no estate is in form left in the bankrupt. The equity of redemption is not an estate, but an interest, and may well be considered as substantially vested in the assignees before a bargain and sale." This case is decided also upon the English law differing from ours. The English courts hold that a mortgage of real estate is a conditional conveyance, while our courts hold that a mortgage is simply an incumbrance, a lieu, an incident to the debt. Lucas et. al. vs. Harris 20th Ills. 165. Vansant vs. Allmon 23 Ills. 33. Loomis vs. Riley 24 Ills. 307. "The general doctrine of courts of Equity relative to absent parties is, that if such absent parties are to be active in the performance, or execution of the decree; *or if they have rights wholly distinct from those of the other parties;* or if the decree ought to be pursued against them; then the court cannot properly proceed, without their being made parties." Gray vs. Larrimore, 2 Abb. U. S. 542. It is not necessary that the bill should be dismissed for want of proper parties, but the fault may be remedied and the necessary parties supplied, and the rule does not apply where the joinder is impossible. Bank vs. Carrolton Railroad 11 Wall. 624. The court in this case Justice Strong, uses the following language: "It is doubtless, the general rule that a bill in chancery will not be dismissed for want of proper parties: but the rule is not universally true. It rests upon the supposition that the fault may be remedied, and the necessary parties supplied. When this is impossible, and when ever a decree cannot be made without prejudice to one not a party the

bill must be dismissed." In the case of Russell vs. Clark's Ex. 7 Cranch. 69 the United States Supreme Court by Chief Justice Marshall held on error, that as the court may instead of dismissing a bill brought to a hearing without proper parties, give leave to make new parties, the court will in this case, set aside the decree of the Circuit Court, and remand the cause with leave to make new parties.

It is a general rule in equity, that all persons materially interested either as plaintiffs, or defendants, in the *subject matter* of the bill, ought to be made parties to the suit, however numerous they may be. The reason, is, that the court may be enabled to make a complete decree between the parties, *may prevent future litigation*, by taking away the necessity of a multiplicity of suits, and may make it perfectly certain that no injustice shall be done either to the parties before the court, *or to others, who are interested, by a decree* that may be grounded upon a partial view of the real merits. When all the parties are before the court, it can see the whole case, but it may not, where all the conflicting interests are not brought out upon the bill. *Gilbert* in his *Forum Romanum*, page 157 states the rule, and illustrates it with great precision. "If," says he; "It appears to the court that a very necessary party is wanting, * * * * as where a man is entitled to a surplus of an estate under a will, after the payment of debts, and is not brought on; &c., the court will see that the parties are not left under precarious circumstances." See note to Wormley vs. Wormley, 8 Wheat. 451. In the case of West vs. Randall, 2 Mason 181, 190. Justice Story says, "So solicitous is the court to attain substantial justice, that it will permit the other parties to come in under the decree, and take the benefit of it, or to show it to be erroneous, and award a rehearing, or will entertain a bill or petition, which shall bring the rights of such parties more distinctly before the court if there be certainty, or danger of injury or injustice." In the case of Mandeville et. al. vs. Riggs. 2 Peters, 482, 487. the court, Mr. Justice Story says, "But in the present case we are of the opinion that upon the death of the parties who were before the court, the bill ought to be revived against the personal representatives. * * * The reason is obvious. * * * If they are not before the court they are not bound by the decree; and consequently in a subsequent suit for contribution, *they may controvert every material fact upon which the decree is founded*, and put the party seeking contribution to the full proofs of them, as well as the responsibility over of the party sued. One of the great principles upon which courts of equity generally require all persons who are known and within the reach of its jurisdiction, to be made parties, is to prevent future litigation and to take away multiplicity of suits. It is a matter of justice as well as of convenience, that all the parties who are ultimately liable to contribution should when practicable be brought before the corut, so that the equities be-

tween them may be adjusted, as well as the rights of the plaintiff." Here is a full and clear statement of the law that will apply to the case at bar. Suppose Fitzgerrel has to sue for his homestead right, or suppose he is sued on his warranty in the deed, both of which are sure to follow this decree, he being no way bound by it, in what position does he stand? It multiplies suits, instead of preventing multiplicity, when if the bankrupt had been made a defendant he would have set up his homestead rights and they would there and then have been preserved to him. Suppose that he is sued on his warranty in the deed. He will come in and defend on the ground of the statute of limitations; that Buffington the grantee should have defeated the suit because more than two years had elapsed between the time of the conveyance and the filing of the bill by the assignee to set it aside; because more than two years had elapsed between the adjudication of bankruptcy and the filing of the bill by the assignee; because the conveyance was not fraudulent at all and the decision so finding was wrong; because the decree was too broad in setting aside the conveyance of the land generally, and not in simply setting it aside as to the creditors whom the assignee represented, and that therefore Buffington could have saved the land by paying the creditors who had proved their claims in bankruptcy, and thus have also saved all but a small portion of the purchase money. All these defences and many more would be available to Fitzgerrel in defending against a suit brought by Buffington against him on the warranty in the deed. Could Buffington introduce in evidence the record of this decree to show that the land was taken from him by paramount title? Certainly not; because Fitzgerrel was no party to it, and was therefore not bound by it. He would therefore have to prove paramount title in the assignee to sustain his suit. If the bankrupt had been made a co-defendant with Buffington the record of the decree against them would be evidence of the fact that the claim of the assignee was paramount, and no other evidence of the fact would be required. This fact of itself it would appear to us, should be conclusive on this point. Two suits would inevitably result from the present decree being sustained. One for homestead and one on the warranty, while if the bankrupt had been made a party, one suit would have been entirely unnecessary, and the other would have been virtually settled in this controversey? Then, is it too much to say, that the joinder of the bankrupt would have prevented a multiplicity of suits, circuity of action, and would (as in the case stated of West vs. Randall. Supra) "In a subsequent suit have allowed the parties interested in the subject matter of the suit to controvert every material fact upon which the decree was based, and put the party seeking relief to the proofs of them, as well as the responsibility over of the party sued." If so then he should have been made a party.

Mr. Justice Johnson in Caldwell vs. Taggert et. al. 4 Peters

190, says, "The general rule is laid down thus: "However numerous the persons interested in the subject of a suit, they must all be made parties plaintiffs, or defendants in order that a complete decree may be made; it being the constant aim of a court of equity to do complete justice by embracing the whole subject; deciding upon and settling the rights of all persons interested in the subject of a suit; to make the performance of the order perfectly safe to those who have to obey it, and to prevent future litigation." And again, "all persons are to be made parties who are legally or beneficially interested in the subject matter and result of the suit. * * * And there are various cases in which, though the heir at law is not a necessary party, he is made such in practice, and the reason assigned is *to free the estate from every blame that may lessen its value at the sale.* And so in cases of indefinite, or blended interests, all the participants are necessary parties. It is clear then that this cause must go back as well, to have the necessary parties made, as to have the decree reformed and reduced to legal precision." Harris vs. Ingleden 3 P. Wiliams, 91.

Mr. Justice Bradley in the case of Williams vs. Bankhead 19, Wall. 563, 571, says, "The general rule as to parties in chancery is, that all ought to be made parties who are interested in the controversey, in order that there may be an end of litigation. But there are qualifications of this rule arising out of public policy and the necessities of particular cases. The true distinction appears to be as follows: First, where a person will be directly affected by a decree, he is an indispensible party unless the parties are too numerous to be brought before the court, when the case is subject to a special rule. *Secondly.* Where a person is interested in the controversey, but will not be directly affected by the decree made in his absence, he is not an indispensible party, but he should be made a party if *possible*, and the court will *not proceed to a decree without him if he can be reached.* Thirdly. Where he is not interested in the controversey between the immediate litigants, but has an interest in the subject matter which may be conveniently settled in the suit and thereby prevent further litigation he may be made a party or not, at the option of the complainant." The reasoning in the case of Robertson vs. Carson, 19. Wall. 99, 105, applies in this case also. In that case the bill charges fraud and conspiracy, as in this, and also asks the taking of an account as in this. There is an account of the taking of rents and profits, and amount of property received from the bankrupt by the defendant and in that case it was held that under the circumstances of the case the presence of the vendor was necessary, one ground being, that his vendees were entitled to his aid in making their defence, and in taking the account between them. This bill was filed since the amendatory act of congress allowing publication as to non-resident parties and since such amendment the courts are more strict in requiring all persons inter-

ested to be made parties, because the grounds of objection that the court might be deprived of its jurisdiction because of the non-residence in the district of necessary parties is now removed.

In the case of Cox vs. Wilder. et. al. being a bill by Cox the assignee in Bankruptcy of Sauer, against Wilder. the grantee of Sauer and wife, the grantor a bankrupt and his wife were both made parties to the bill, and it was there held; that as against the assignee the dower interest of the wife and the homestead interest of the husband still existed in the land of which they could not be deprived, except by a release, or abandonment under the laws of the state where they resided. But the principal point decided by Judge Dillon in that case is the one we have insisted upon throughout, and that is, that in a bill filed for the purpose of setting aside a fraudulent conveyance the assignee represents the creditors alone and abandons for the purposes of that suit his dual character, and in no way represents the bankrupt, whose acts and character he is attacking and charging with all kinds of fraud and mat-practices. Cox. vs. Wilder. et. al. 2 Dillon C. C. 45. "Where the marshall as messenger of the U. S. District court seizes property and delivers it to the assignee in bankruptcy, and is sued therefor in a state court by a third person who claims it, both be and the assignee may join as plaintiffs and bring a suit in equity in the U. S. circuit court against the *bankrupt and such third* person to set aside as fraudulent against the assignee certain transfers under which such third person claims the property; and an injunction will issue to restrain the further prosecution of the suit in the State Court." Kellogg vs. Russell 11 Blatchf. 519.

An assignee in bankruptcy has the same title to the bankrupts estate, which the bankrupt himself had before the adjudication of bankruptcy. But an exception to that rule obtains where the bankrupt has transferred his property to defraud his creditors. Re-Dunkerson 4 Biss. 227. Where the leading object of a suit is to annul, or vacate a judgment the parties to the original suit, or their privies are necessary parties. York vs. Cartwright 42 Texas 136. In the case of Barney vs. Baltimore 6 Wall. 280, the Supreme Court, Justice Miller said, referring to the decision in the case of Shields vs. Barrow 17 Howard 130, that parties were indispensible, even where the court could not obtain jurisdiction over them, where they had an interest not only in the controversy, but an interest of such a nature that a final decree cannot be made without either affecting that interest, or leaving the controversy in such a condition that its final determination may be wholly inconsistent with equity and good conscience. And the same judge further says in said cause: "They,"—the parties left out of the suit, "could at any time apply to the proper court, and ask a repartition of the whole tract, unaffected by the decree in this case, because they can be bound by no decree to which they are not parties." The same observations apply to any account

stated by the court, of rents and profits and to any decree settling the amount due on that score." Now in this case, can not Fitzgerrel at any time, file a bill against the assignee, or any purchaser, to establish his homestead right in this land, and cause thereby a change in the whole title to the property, and as to the finding of the rents and profits of the land, in a suit between himself and Buffington, in reference to them, the decree in this case would cut no figure whatever, nor aid Buffington in any way in establishing his right against Fitzgerrel. While if Fitzgerrel had been made a party, the finding as to that, would be final. In the bill it is charged that Fitzgerrel the Bankrupt, kept the personal property and the rents and profits of the land, and then prays that Buffington give an account of them. If it be true, then, that a judgment has been rendered against Buffington for the amount of the rents and profits, he would have a right to recover them back from Fitzgerrel, and a right to require a settlement of the amount of those rents and profits. Now does not the rule laid down in Barney vs. Baltimore *Supra*, apply directly, that Fitzgerrel should have been made a party, if this be true? In the case of the Traders Bank vs. Campbell 14 Wall. the same doctrine is held.

In the case of Mellen, Crawford & Co. vs. Ames & Miller 39 Iowa 283, and hundreds of other cases, it is held, that a voluntary conveyance of real estate for the purpose of defrauding creditors is good as to all persons except creditors whose debts are in existence at the time of the conveyance and that the extent to which such a conveyance may be set aside is only as to such creditors; that between Buffington and Fitzgerrel this conveyance is as valid as if it had been the most legitimate and lawful transaction imaginable. Therefore, had not Fitzgerrel a right to be heard on the question of setting aside a conveyance which was good in every respect except as to these creditors? Had he not a direct and well defined interest in the subject matter—the conveyance, even if fraudulent, and even, if he was a bankrupt? In the decree in this case the conveyance is set aside annulled and declared void absolutely, not as to existing creditors, but as to all persons. Had not the bankrupt a right to insist on the limitation of the decree to the scope of the bill? The grantee Buffington might care nothing about that; might in fact desire to have the decree absolute as to every person, himself included; so that the bankrupt would be liable to him for the whole consideration for the conveyance, while the bankrupt might, and would, desire to have his whole responsibility limited to the amount of the debts which the assignee represented only. A court of Equity will not permit litigation by piecemeal. The whole subject matter and all the parties should be before it, and their respective claims determined once and forever. Wilson vs. Lassen 5, Cal. 114. The heir of the debtor and the fraudulent grantee are necessary parties to a bill by a creditor to set aside a fraudulent conveyance. Fowler vs.

McCartney 5, Cushman 509. Assignees in bankrupty do not take the whole legal title of the bankrupt in property as heirs and executors do. Nothing vests in them, even at law, but such estate as the bankrupt has the beneficial as well as legal interest in, and which beneficial interest is to be applied by them to the payment of the debts of the bankrupt. Ontario Bank vs Mumford 2, Barb. Ch. 596. An assignment by a debtor, in contemplation of bankruptcy, is not absolutely void for all purposes, but is void only as to the assignee duly appointed. Seaman vs. Stoughton 3, Barb. Ch. 344. In the case of Cox vs. Wilder et. al. 5, National Bankruptcy Register 443, which was a bill to set aside a fraudulent conveyance, the court Judge Treat said: "It is charged that the husband and wife claim respectively homestead and dower interests, though the deed was fraudulent as to creditors, and therefore they are proper parties. The title which the plaintiff seeks, involves their demands and also their acts, and a judgment would not meet the exigencies of the case unless they were concluded thereby."

The rule is universal, not to allow an account to be taken in the absence of any person interested in it, who is forthcoming and can be made a party. Palk vs. Clinton 12, Vesey Jr. 53. If the person is out of the jurisdiction it must be so stated in the bill. 1 Montag. Eq. Pl. 66. In a court of Equity it may be necessary to make one person a party defendant in the cause because another is entitled to his assistance. Lowther vs. Carlton, Barnard 361. 2 Atk. 139. And where a defendant is interested in having another made a defendant, the plaintiff must make such a party defendant. Williams vs. Williams 9, Mod. 299. Lord Chancellor Hardwick says in this case "Where you want parties before the court to have a complete account there you must have all the executors, or the representatives of every executor before the court, for each executor may possess some distinct part of the personal estate." In this case the original bill alleges that the personal property conveyed by the bankrupt to Buffington was never delivered and that the rents and profits of the land &c. are in the hands of the bankrupt. Yet the bill requires Buffington to make discovery of the same and charges him with the value, without giving him any power to ascertain the amount. Fitzgerrel has all the money and property in his possession, but still his nominal grantee must state how much there is of it and account for the same. Suppose that allegation was true. How can Buffington ascertain the amount of funds derived from the sale, or rents? He would have to file a bill against Fitzgerrel to have discovery from him and then he could answer the other. While if Fitzgerrel had been made co-defendant with him a joint discovery could have been had and a decree rendered thereupon. It would be impossible for Buffington to have answered truly if the facts alleged in the original bill were true, because all the evidence was

in the hands of Fitzgerrel and he was not made a party. The complainant himself in his bill shows the absolute necessity of the making of Fitzgerrel a defendant when he says (Page 3 of Record) "Your orator further shows unto your honor, that since the pretended conveyances of said lands were executed the said Fitzgerrel has ever occupied and is now in possession of all of said lands, and has had full control of the same, and has been occupying or renting to tenants all of said lands with the buildings thereon, and has collected from said tenants all the rents therefor, and has paid taxes, paid off incumbrances and insurance, and made improvements on said premises the same as if he were the owner in fee, *and has never accounted to said Buffington, or to any one for the rents so collected from said* tenants. * * * * And your orator further shows unto your honors, that no delivery of the personal property was ever made under and by virtue of said pretended sale, but that the said personal property above described and included in said sale was left under the control and in the possession of said vendor who afterwards, as before said pretended sale used, sold, and disposed of the same for his own benefit, and has never paid to, accounted for, nor been called to account for the same, or for the proceeds thereof, or any part of the same by the said Buffington his agent, or attorney, although all of said property with the knowledge of said Buffington has been long since disposed of." Still by the original bill Buffington is required to give an account of all this property, rents and profits, although he has never had any account of the same himself, and has no means of compelling an account. The same doctrine applies in this case as in the case last cited where an accounting is required, all the parties to the account must be brought into court. And it would seem to us peculiarly to be required, where the whole knowledge of the state of the account is alleged to be in one who is not attempted to be made a party to the suit. If it be true that the assignee in this case represents the bankrupt, why does not the assignee make a statement of the account for the bankrupt, and have the court just render a judgment for it and collect it out of Buffington, although none of it ever came into his hands, or possession, and although he has never had any account of it? In the case of King vs. Martin 2 Vesey Jr. 641 Lord Chancellor Loughborough says: "This is a bill stating a case for relief, a case of confederacy between the defendants and the material party, and against whom a decree might be made, not perhaps for the specific relief prayed by this bill, is the bankrupt," and holding that he was a proper party to the bill with the assignee, probably on the ground of fraudulent confederacy, or to make him account.

There is still another ground upon which we claim in this case to sustain the doctrine that the bnkrupt was a necessary party to the suit, and that is; because of the allegation in the bill

(Page 4 of Printed Record) that, "the defendant (Buffington) combined and confederated with the said Fitzgerrel and did accept said transfers and conveyances &c." "When persons are expressly charged as combining with one who is made a defendant, it will be necessary to make such persons parties to the suit." Edwards on Parties 17. Galle vs. Greenhill. Finch, 202. See note to the case of King vs. Martin. 2 Vesey Jr. 641, where it is said, that where the bankrupt is charged with fraudulent collusion with his assignees, he was properly introduced in the record as a defendant. But in general cases he ought not to be joined as a party. The distinction seemingly being, whether, or not, he is charged with a fraudulent confederacy. It is further said said by Story in his Eq. Pl. § 233 that in case of a bankrupt where a bill is filed to discover his acts before he became a bankrupt, he is properly joined and compelled to make discovery. In the form of a bill in chancery given by Story in his Eq. Pl. § 29, the charge of confederacy is that the defendants, combining and confederating together, and with divers other persons as yet to the plaintiff unknown, *but whose names when discovered he prays may be inserted in the bill, and they be made parties defendant thereto, with apt words to charge them in the premises &c.*," shows conclusively that all parties charged with confederating should be made joint defendants. The same form is given in Von Heythuysen's Eq. Draft. 5. It is probably true that where this charge of confederacy is made as a mere formal charge, that it of itself, would not make the parties charged necessary parties. But where it is meant to be relied on as a ground for equitable interference, it is certainly required, to make those charged with the fraudulent combination parties to the suit, because no man should be charged with a fraud, or conspiracy without having an opportunity to answer, and purge himself of the charge. Mitfords Eq. Pl. by Jeremy 40, 41, et. seq. Cooper's Eq. Pl. 9, 10. Barton's Suit in Eq. 27. By the 21st Rule of the Equity rules of the Supreme Court of the U. S. January Term 1842, it was provided that in all suits thereafter brought, the pleader was permitted at his option to omit this charge of confederacy, but in this case the pleader having made the charge specifically; that confederating with Fitzgerrel he did accept the conveyances and did intend thereby to defraud &c., was made as the specific charge upon which the bill was based, and Fitzgerrel should therefore have had some opportunity to relieve himself from the charge. Can it be said that Fitzgerrel had no interest in the result of the suit when a decree in favor of the assignee would be a decree solemnly finding him guilty of the fraudulent combination charged? Yet he had no opportunity to give his reasons why such a charge was not true, or explaining away the apparent truth of the charge. Can a man be condemned unheard of such a charge, even if he should not suffer any immediate, di-

rect, pecuniary loss thereby? Fraud is looked upon still by our law as so abhorrent, that it will never be presumed but must be strictly proven. Has it then become so common, or has that abhorrence become so much modified that the decree of a court finding the charge to be true, is readily rendered against an absent party. In the case of Miller vs. Jameson 24 N. J. Eq. 41, the court holds that the grantor the debtor is a proper party because he took part in the fraud and participated in making the fraudulent conveyance. Robinson vs. Davis 3, Stoct. 302. Bennett vs. Maguire 58, Barb. 625. Dorsheimer vs. Rorback. 8, C. E. Green 46. In the case of C. S. M. Co. vs. V. & G.H.W.Co. Sawyer C. C. 685. Mr. Justice Field in rendering his decision says, "It is undoubtedly a general rule in equity that all persons interested in the matter in controversey, or object of the suit should be made parties in order that complete justice may be done and a multiplicity of suits be avoided. And usually when it appears that persons thus interested are not brought in, the court will order the case to stand over until they are made parties." If the decree in this case had been against the land alone, there might be some reason for claiming that Fitzgerrel was not a necessary party because the action would have been *in rem*, but here they have taken a judgment *in personam*, with the facts on which the same must have been based, Fitzgerrel was so closely interwoven, that he could not be left out with justice to Buffiington. Hammond vs. Hudson River I. & M. Co. 20, Barb. 378, Vanderpoel vs. Van Valkenburgh 2 Seld. 190.

Where parties are charged by clear, distinct and specific allegations in the complaint with fraudulent and unlawful acts, and with efforts to hinder and delay creditors in the collection of their debt, that is enough to hold them as proper parties to the action. Hammond vs. Hudson River I. & M. Co. 20 Barb. 378. Brady vs. McCosker. 1 Coms't. 214. Huggins vs. King 3. Barb. 616. In this last case of Huggins vs. King the court say, "It is contended that Scudder and Sheldon ought not to have been made defendants. * * A combination between these defendants is alleged, and the particular facts by which they accomplished their fraudulent purpose are stated," and holding that by reason of these allegations they are proper parties. In the case of Bowles vs. Stewart 1 Sch. & Lef. 209, the solicitor who was active in aiding his client to obtain a fraudulent release, was properly made a party defendant, because he was charged with being a party to the fraud. If this suit had been at law, the bankrupt would have been an absolutely indespensible party, because he was in the possession of the property. In the case of Carr. vs. Gale et. al. 3 Wood. & M. 38-67. Judge Curtis says, "Some error on this point has been caused by the common expression in the books that a bankrupt is *civiliter mortus*. But this means dead only as to the control of his old property and contracts. * * * But the bankrupt is still alive for other purposes in law as he is in fact. * * The fur-

niture of the bankrupt reserved originally, as well as his property acquired since if trespassed on by the assignee, or others must be capable of being protected &c."

Under the present law, he would in accordance with this decision, have a riget to defend his homestead, and any after acquired rights he might have in the land. He would be *civiliter mortuus* as to nothing that had transpired since his bankruptcy and five years having elapsed since that time, he could easily have earned this property again and have become possessed of a legal *bona fide*, existing title therein, and at least after that length of time and he being in actual possession he should have been made a party. It may be insisted upon, that the appellant, Buffington can not claim and urge this defect. But under the authorities cited, it was the duty of the court to refuse to render the decree until Fitzgerrel was so made a defendant, or it was the duty of any party interested to make the objection. But it is a matter material to appellant in this case that Fitzgerrel should be made a party. When appellant brings suit upon the breach of the covenants of the warranty in his deeds, he wants this decree to be binding upon Fitzgerrel as well as himself. He wants the decree in this case to be evidence of paramount title, so that he will not lose both his land and his money. He has a further interest, and that is, to have the benefit of the discovery of Fitzgerrel as to personal property, rents, money received, and paid out, and all transactions since the bankruptcy. These are material to a proper and legal defence.

Now taking it for granted that the bankrupt was a necessary party, what effect would his non-joinder have upon this action? "If the proper parties are not made to the bill the defendant may either demur to the bill, or take the objection by way of plea or answer; or when the cause comes on to a hearing, he may object, that the proper parties are wanting; or the court itself may state the objection, and refuse to proceed to make a decree; or if the decree is made, it may for this very defect, be reversed on a rehearing, or on an appeal." Story's Eq. Pl. § 75. "Where a bill is brought to set aside a conveyance by the debtor as being fraudulent as to creditors, the debtor should be joined as defendant, and the court should require that he be joined before final decree, *although no exception is taken by the other parties.*" Shaver vs. Brainard 29. Barb. 25. "And where a creditors bill assails a deed either for the purpose of having it rectified, or set aside, all parties to the deed are necessary parties to the suit, and without their joinder no valid decree can be made." Ward vs. Hollins 14, Maryland 158, Story's Eq. Pl. 216 a. "It is the usual and better practice where the want of proper parties is apparent on the face of the bill to take advantage of it by demurrer, or motion to dismiss, or if patent by plea, or answer, but where the rights of the parties not before the court are intimately connected with the matter in dispute, so that a final decree can not be made without materially af-

fecting their interests, as in this case, the objection may be taken at the hearing, or on appeal, or on error. Courts will officially take notice of such omission and rule accordingly." Prentice vs. Kimball, 19 Ills. 320. "The omission of indispensible parties, or when a complete decree can not be made, or the rights of absent parties would be affected, the objection may be taken on the hearing by the court itself *ex mero motu*, or for the first time on appeal." McMaken vs. McMaken 18 Ala. 576. Gould vs. Hays 19, Ala. 438. Woodward vs. Wood 19 Ala. 213. Chapman vs. Hamilton 19 Ala. 121. Mallow vs. Hinde 12 Wheat. 193. The Supreme Court of the United States will not make a final decree upon the merits of a case, unless all persons essentially interested are parties, although some of those parties are not within the jurisdiction of the court. Russell vs. Clark 7 Cranch 69. See also, Vose vs. Philbrook 3 Story 336. Burwell vs. Cawood 2 How. 57o. Wilson vs. City Bank 3 Sumner 422. Adams Eq. 323, Mitford Ch. Pl. 32. Fell vs. Brown 2 Blatch. C. C. 276. Brown vs. Blount 2 Russ & M. 83. Willats vs. Busby 5 Bea. 193.

Neither the act of congress of Feb'y 28, 1839, nor the 47th rule for the equity practice of the circuit courts of the United States, enables a circuit court to make a decree in equity in the absence of an indispensible party whose rights must necessarily be affected by such decree. It is clear that the circuit court can make no decree as between the parties before it, so as to do complete justice between them without affecting the rights of absent parties, and that the bill ought to be dismissed. Shields et. al. vs. Barrow 17, Howard 130. Where fraud is alleged in a transaction all the parties to the fraud must be brought before the court. The court can not condemn a party of fraud not before the court, and the cause having been brought to a hearing in this imperfect condition, the bill must be dismissed. Mallow vs. Hinde 12 Wheat. 193. Cameron vs. McRoberts 3 Wheat. 591. The objection that the proper parties are not before the court may be taken at the hearing, or on appeal, and where the court can not make a decree without affecting the rights of other parties, the court can not proceed, and it is the duty of the court *on its own motion* to refuse a decree. Florence Sew. Mach. Co vs. Singer Manufac. Co. 8 Blatch. 113. It is well settled that neither the act of congress of 1839, nor the 47th rule in equity enables the circuit court to make a decree in a suit in the absence of a party whose rights must necessarily be affected by such decree and that the objection may be taken at the hearing, or in the appellate court. We think the decision of the court below in dismissing the bill was right. Coiron et. al. vs. Milandeau et. al. 19 How. 113.

From these decisions and many others to the same effect, without a contrary opinion, the universal rule must be deduced, that it is error for any court to enter a decree where the proper parties are not all before the court, and that it is not required

that the parties shall make the point, or raise the question in their pleadings or otherwise, but that the court shall take official notice of the fact and refuse to enter a decree.

In the case of Lietze vs. Clabaugh et. al. 56 Ills. 136, the court say, "The interest of Hume in the subject matter of the litigation being thus disclosed, the complainant should have amended his bill and made him a party. This decree may seriously prejudice his interests and he should have an opportunity to protect them. The decree is reversed for this cause &c." In the case of Herrington vs. Hubbard 1 Scam. 569, the Supreme court of Illinois further say, "The rule is almost inflexible—certainly so, where it can be done without extraordinary difficulty, or where the defendants are not very numerous, and do not reside in remote and distant countries, that all parties in interest shall be made defendants, so that no decree shall be made which can affect their interest, without their being heard. Courts will take notice of the omission, though no demurrer be interposed for want of proper parties, when it is manifest that the decree will have such an effect."

Then in this case if it be true that the bankrupt is a neces sary party, the decree of the court was wrong, and as the rule is established that a bill of review in the same court will set aside and reverse the original decree for the same reasons as would reverse it upon error, or appeal, then this bill should be sustained upon this ground. We do not insist that the bill in this case should be dismissed, but that no decree can be entered until Isaac Fitzgerrel has been made a defendant and given an opportunity to set up and prove his defence. We do claim that he has a right to be heard and that it was error to enter a decree in this cause until he was so heard. Conceding for the sake of argument that generally a bankrupt is not a necessary party to a suit brought by the assignee to set aside a fraudulent conveyance made by the bankrupt, yet the circumstances surrounding this case would even then, it appears to us, require him to be made a party. The lapse of time from the time of the conveyance until the bill was filed; the probability that other and conflicting titles had been acquired to the property in the meantime; the fact that a complete discovery could not be had without the bankrupt; the fact that he, the bankrupt is charged directly with combining and confederating with the defen dant; the fact that a decree in such case would deprive him of his discharge as a bankrupt, or at least would be evidence of the fact; the fact that he would be subsequently liable on his warranty in the deed to Buffington; the fact, admitted in the pleadings, that a former suit was dismissed, the injunction dissolved, and the personal property returned and disposed of; and the further and conclusive facts that an account is demanded between Buffington and Fitzgerrel and that the homestead of the bankrupt exists in the property and is disregarded, all these facts taken together would take this case out of the gener-

al rule and make it absolutely indispensible that Fitzgerrel should have been made a defendant. If the mere allegation had been made that this conveyance was fraudulent and void under the bankrupt law, by reason of having been made in violation of the 35th Section, it might be possible that the appearance of the bankrupt would not have been indispensible, but the assignee who filed this bill did not see fit to rely upon the grounds required in that section and having alleged other grounds not therein required he must abide by the consequences thereof and be bound by the well established rules of equity jurisdiction. He has stated many things in his bill not required by the bankrupt law such as the combining and confederating charge; the charge of receiving and making use of the rents and profits; the asking for a discovery &c., and if the pleader uses these charges he thereby assumes all the consequences thereof, even if the consequence is that other persons must be made parties. And we insist in this case that such a consequence necessary follows the allegations of this bill.

The third ground of objection to the decree in this cause that we make is, that there are no allegations in the original bill upon which the judgment for $3891.88 can be sustained. The bill filed by appellee in the Circuit Court alleges (Page 52 and 53 of Record) that Fitzgerrel was the owner of a large amount of real estate; a stock of goods valued at $2,500; a lot of cattle, &c., value unknown; that he made a pretended conveyance of the real estate, goods and stock of cattle to Buffington; that Buffington gave nothing for them but his promissory notes: and that the notes were returned to Buffington and he never paid anything on them; that Fitzgerrel retained the possession of the real estate and collected and used all the rents; that Fitzgerrel kept possession of the stock of goods and sold and disposed of them and retained the proceeds; that Fitzgerrel also retained possession of the cattle, horses and stock, used and sold the same, and disposed of the proceeds and used the same for his own benefit; that in short,—Buffington never received, or obtained possession of any of the property purchased, never paid any of his notes, but the same were returned to him and they were cancelled. The prayer of the bill is that defendant Buffington may answer under oath the fair and just value of the personal property, and the value of the use of the same; that he be restrained from selling the same, and that the conveyance be set aside. Under this bill and prayer how can a judgment be rendered against the defendant for $3891.88? We imagine that all the sages of the Woolsack from Sir Matthew Hale down to the present day, could not account for this judgment.

The allegation in the bill itself clears the defendant from all liability for any sum of money, unless he is guilty of a trespass for having fraudulently received the conveyance of this property, and this judgment is the amount of the damages. This seems to be the only ground upon which it can be account-

ed for. The complainant alleges that he never obtained any of the property and this allegation is a very proper one to be made to show the fact, that the conveyance was fraudulent and to obtain a decree to set it aside. But, when it comes to rendering a judgment against the defendant, it seems to us that the fact, that he received nothing ought to clear him from having to pay anything. How is the complainant injured by the defendant, if he took nothing away from him, or the creditors? It is true perhaps, he might be sued in trespass and nominal damages obtained, for being a party to a fraud. But we imagine a court of chancery will hardly resolve itself into a *quasi* criminal court and render a judgment for damages. One of the questions to be heard upon the sufficiency of this bill of review is; was the decree a proper one necessarily following the course of the pleadings, or in other words; can the decree be sustained upon the allegations made in the pleadings? In this bill of review, only the record and pleadings can be considered,and unless the pleadings set forth, or show grounds for the decree, it certainly can not be sustained. If there are no allegations upon which a decree can be made, can the court manufacture a case of its own?

"A decree must be founded on, and sustained by, both the allegations and the proofs in the cause; and it cannot be based on a fact not put in issue by the pleadings." Carneal vs. Banks 10, Wheat. 181. Gregory vs Power 3, Litt. 339. "It must conform to the allegations in the the pleadings, as well as to the proofs in the cause." Crockett vs. Lee 7, Wheat. 522. Ringold vs. Ringold 1, Harr. & J. 11. Rigg vs. Corder 12, Leigh. 69. Cloud vs. Whiteman 2, Harring. 401. Moury vs. Mason 8, Porter. 211. Smith vs. Smith 1, Ired. Ch. 83. Langdon vs. Roane 6, Ala. 518. It is not a question that can be discussed at all, that a decree cannot be made, or granted for more than is prayed for by the complainant. Nor is it necessary that a decree should be different from the relief prayed, so long as courts allow amendments at any stage of the case. If it had been imagined in this case that a judgment would be sought against the defendant for a sum of money he could have defended against that. But all that was asked in the bill, or in the prayer for relief was that the conveyance be set aside and the defendant restrained from conveying the property. How could the defendant imagine from anything shown in the pleadings that he would be called upon by the court to pay a large sum of money? Suppose a decree had been rendered by default, *pro confesso*. Would any one claim that the court could legally enter a decree for nearly $4000? Upon what would such a decree be based? The allegations in the bill show that no decree for any sum of money should be rendered, for it says that the defendant got none. Then upon what allegation is such a decree sustained? Can it be sustained upon allegations in the answer? The answer sets up the agreement as to the pur-

chase; the amount to be paid; the notes and money given in consideration; the amount paid on the notes; how it was paid; and the denial of any fraud &c. The replication is general. There is then nothing in the answer or replication upon which any decree for money could be based. The bill denies that there is any money due from Buffington. The answer denies it, and there is nothing upon which such a decree can hang. It was an utter surprise to the defendant, and he thereupon filed his petition for a rehearing which was refused. He then filed his bill for review and that was refused.

In the case of Gault et. al. vs. Hoagland et. al. 25 Ills. 266, the court held that where a decree was taken *pro confesso* the defendant could on error contest the sufficiency of the bill and insist that the averments in it do not justify the decree. In the case of Ward vs. Enders 29 Ills. 519 the court say the decree must conform to the prayer of the bill. The case of Hall et. al. vs. Towne 45 Ills. 493 comes nearer to the point made herein than any one we have been able to find. "The bill does not seek for an account of the rents and profits, and there is no averment in it that appellants have been in receipt of the rents and profits. * * * A party complainant must stand, or fall by the case he makes in his bill, and the decree must conform to the prayer of the bill. There is no prayer in the bill for an account of the rents and profits. For this error the decree must be reversed and the cause remanded with leave to amend the bill and other pleadings." In the case at bar so far from charging that the defendant was in receipt of the rents and profits, it specifically alleges that he was not. Neither does he pray for an account of the rents and profits. He simply says this in his prayer, "that said defendant may be required to give a fair and just value for said personal property and for the use of said premises upon a fair accounting and may be restrained &c." Not one word praying that an account be taken of the rents and profits, and that a judgment may be rendered against the defendant for the same. Indeed such a prayer would be absurd for the complainant says in the same bill (Page 52 of Record) "Your orator further shows unto your honor, that since the pretended conveyance of said lands was executed, said Fitzgerrel has occupied and is now in possession of all of said lands, and has had full control of the same, and has been occupying or renting to tenants all of said lands, with the buildings thereon, and has collected from said tenants all the rents therefor, and has paid taxes, paid off incumbrances and insurance, and made improvements on said premises, the same as if he were the owner in fee, and has never accounted to said Buffington, or to any one for the rents so collected from said tenants, nor has he the said Fitzgerrel paid any rent for the use of the said premises which he used and occupied since said conveyance before described. Your orator further shows that there has never been any contract, stipulation, or agreement for any definite rent;

nor has there been any definite rent, nor has there been any settlement, or accounting between the said Fitzgerrel and said Buffington for said premises so occupied and rented, as above described, from said 30th day of December, 1867, to January 1st, 1872. And your orator further shows unto your honor that no delivery of the personal property was ever made under and by virtue of said pretended sale, but that said personal property above described and included in said sale was left under the control and in the possession of said vendor, who afterwards, as before said purchase, used, sold and and disposed of the same for *his own benefit, and has never paid to; accounted for; nor been called upon to account for the same by the said Buffington his agent or attorney*, although all of said property with the knowledge of said Buffington, has been long since disposed of." Now this is every word that is said about what became of the property. The real estate was kept by Fitzgerrel and nothing paid, or accounted for; the personal property retained and nothing paid, or accounted for. Where is the basis for the judgment against Buffington? It may be that a judgment could be obtained against him for trespass, but we submit it must be in a different form of action, and specific charges must be made. A judgment might just as well have been rendered in this case against the defendant for slander as the present judgment, and in fact we don't know from anything in the pleadings but that it was for slander, for there is as much said on that subject in the bill to lead us into the knowledge of the basis of this judgment, as any other. In the case of White vs. Morrison et. al. 11 Ills. 361 the court *Judge Treat* says: "But the complainant has not made a case by his bill, that will authorize him to defeat the purchase on this ground. * * * He cannot allege one cause for relief against the purchase and make out his case by proof of a different one. His proof must correspond with the allegations he has made, and not be inconsistent therewith. He must stand or fall with the case made in his bill." In the case of McKay vs. Blissett et. al. 5, Gilman 505, the court *Judge Treat* also says: "A complainant must recover on the case made by his bill. He is not permitted to state one case in the bill, and make out a different one by the proof. The allegations and proof must correspond; the latter must support, and not be inconsistent with the former. Although a good case may appear in the evidence, yet if it be variant from the one stated in the bill, the bill will be dismissed. *The defendant has the right to answer and contest the case* on which the complainant claims relief." Harrison vs. Nixon 9 Peters 483. Boon vs. Chiles 10 Peters 177. 1 Smith's Ch. Pr. 346. The point upon which the decree in the case of Rowan vs. Kirkpatrick et. al. 21 Ills. 17 is based, is very similar to this point. In that case the defendant appealed and alleged that the decree was erroneous in finding that he had paid out a sum of money on fourth class claims as Adm'r. when there was no allegation

in the bill of that fact, and upon this the court say: "But this is no where alleged in the bill,—it comes out incidentally. It has been decided in several cases that a complainant must recover on the case made by his bill, and he cannot be permitted to state one case in the bill and make out a different one in proof. The allegations and proof must correspond, mutually supporting each other. Although a good case may appear in the evidence, yet if it is variant from the one stated in the bill, the bill will be dismissed. It is a settled principle in all cases, that the allegations and proofs must correspond, that the latter must make out the former, and that a party will not be entitled to relief although the evidence makes out a clear case in his favor, unless there are averments in the bill of the shape made by the evidence. A party must stand or fall by the case made by his bill." See also Chaffin vs. heirs of Kimball 23 Ills. 36. Ohling vs. Luitjens 32 Ills. 23. Price vs. Blackmore 65 Ills. 86.

"Every fact essential to the plaintiffs title to maintain the bill and obtain the relief, must be stated in the bill, otherwise the defect will be fatal; for no facts are properly in issue unless charged in the bill, and of course no proof can be generally offered of facts not in the bill, *nor can any relief be granted for matters not charged*, although they may be apparent from other parts of the pleadings and evidence, for the court pronounces its decree *secundum allegata et probata*. The reason of this is that the defendant may be apprised by the bill what the suggestions and allegations are against which he is to prepare his defence." Helm vs. Cantrell 59 Ills. 529. Story's Eq. Pl. § 257. 1 Dan. Ch. Pr. 377. Fitzpatrick vs. Beatty 1 Gilm. 455. Primmer vs. Patton 32 Ills. 528. Brainard vs. Arnold 27 Conn. 617. Bailey vs. Rider 10 N. Y. 363. Crockett vs. Lee 7 Wheat. 522. Jackson vs. Ashton 11 Peters ——. James vs. McKernon 6 Johns. 564. Woodworth vs. Huntoon 40 Ills. 132. Means vs. Means 42 Ills. 50. This bill was evidently framed for the purpose of making discovery of fraud in the sale and setting it aside as hindering creditors. The claim for a judgment against the defendant seems to have never been thought of until it was rendered, the court evidently thinking at the time that the bill prayed for an account to be taken and a judgment rendered against the defendant for the amount of money that came into his hands. But the defendant had no opportunity whatever of preparing any defence against this judgment and the complainant himself took no evidence with a view to obtain a judgment, nor was there anything done, or said throughout the whole case, which put the defendant upon his guard, or led him to suspect that a claim for a judgment might be made against him, the whole case on one side being an attempt to show a fraudulent conveyance, and on the other side to show a *bona fide* conveyance. Therefore for this error in the decree the bill of review ought to have been sustained and the demurrer overruled.

It may possibly be claimed on this point that under the

prayer for general relief, that this judgment can be sustained. But, we insist that even under that prayer this species of relief cannot be granted. In Daniel's Ch. Pr. Vol. 1, Page 383, it is said: "The rule was, that when the prayer did not extend to embrace all the relief to which the plaintiff at the hearing might show a right, the defect in the relief might be supplied under the general prayer, *provided that such relief were consistent with that specifically prayed, as well* as with the case made by the bill, for the court would not suffer a defendant to be taken by surprise, and permit a plaintiff to neglect and pass over the prayer he had made, and take another decree even though it were according to the case made by his bill." The relief given under the general prayer must be agreeable to the case made by the *bill*. Story's Eq. Pl. § 41, 42. Chalmers vs. Chambers 6 Har. & John. 29. Hobson vs. McArthur 16 Peters 182. Reed vs. Cramer. 1 Green's Ch. 277. Franklin vs. Osgood 14 John. 527. English vs. Foxall 2, Peters 595. Kibler vs Whiteman. 2 Harr 401. The court will grant such relief only as the case stated will justify and will not ordinarily be so indulgent as to permit a bill framed for one purpose to answer another, especially if the defendent *may be surprised or prejudiced* thereby. Mitford's Eq. Pl. by Jeremy, 38, 39. Colton vs. Ross, 2 Paige 396. Lloyd vs Brewster, 4 Paige 537. Walker vs. Deveraux, 4 Paige 229. Foster vs. Cook, 1 Hawks.509. Lingan vs. Henderson, 1 Bland 252. Pleasants vs. Glasscoke, 1 Smedes and Marshall, 17, 24, 25. Bebee vs. Bank of New York, 1 Johns 559, where the vendor filed a bill for a specific performance against a purchaser, who had been in possession under the contract for several years. The court refused under the prayer for general relief, to direct an account of the rents and profits against the purchaser, although he had stated in his answer that he was willing to pay a fair rent. Williams vs. Shaw 3 Russ. 178, note. Lord Elden in the case of Hirn vs. Mill 13 Vesey 119 lays down the rule that," as to this point the rule is, that if the bill contains charges, putting facts in issue that are material, the plaintiff is entitled to the relief which these facts will sustain under the general prayer, but he cannot desert specific relief prayed, and under the general prayer ask relief of another description unless the facts and circumstances charged by the bill will,—consistently with the rules of the court maintain that relief. It is to be observed that in order to entitle the plaintiff to a decree under the general prayer, different from that specifically prayed the allegations relied upon muat not only be such as to afford a ground forthe relief sought, *but they must have been introduced into the bill for the purpose of showing a claim to relief and not for the mere purpose of corroborating the plaintiff's right to the specific relief prayed. otherwise the court would take the defendant by surprise which is contrary to its principles.*" Daniel's Ch. Pr. 386. Stevens vs. Guppy, 3 Russ. 171. Roche vs. Morgell, 2 Sch. & Lef. 721. Ferraby vs. Hobson, 2 Phil. 255. Chap-

man vs. Chapman, 13 Beav. 308. Smith vs. Smith 1 Ired. Eq. 83, Rochester vs. Anderson Litt. Sel. Ca. 146. Jones vs. Parish of Montgomery &c. 3 Swanst. 208. Legal vs. Miller, 2 Vesey 299. Lord Walpole vs. Lord Orford, 3 Vesey 416. Scudder vs. Young 25 Maine 153. Cooper's Eq. Pl. 14 "The facts which give jurisdiction to the court and a right to relief must be plainly and succinctly stated. The amount and character of the debt should be set forth, for a decree can not be rendered for other particulrrs and causes of action not mentioned, or alluded to in the pleadings." Bump on Fraudulent conveyances 537. Walthall vs. Rivers 34 Ala. 91. Strike vs. McDonald 2 H. & G. 191 S. C. 1 Bland 57, "No decree can be founded upon evidence, and in relation to matters which are not put in issue between the parties." Wilson vs. Horr 15 Iowa 489. Roberts vs. Gibson 6 H. & J. 116. Tripp vs. Vincent 3 Barb. ch. 613. Baily vs. Ryder 10 N. Y. 363. If the evidence in this cause could in this proceeding be investigated we should claim that there was neither evidence nor pleading to sustain it, but on the pleading alone there can be no doubt that it can not be sustained. The decree itself is in contradiction of the facts alleged in the bill, for the bill specifically alleges that Buffington obtained nothing from the estate either real, or personal. How then can he owe it anything?

In the case of Bachman vs. Sepulveda 39 Cal. 688, which was a suit brought by a creditor against the fraudulent grantee to set aside the conveyance, the court by Chief Justice Rhodes says, "The leading issue in the case is the fraudulent intent in the execution of the conveyances and the judgment is the declaration of a trust. * * * The allegations of the complaint do not support the judgment. A judgment that is not supported by the pleadings is as fatally defective as one which is not sustained by the verdict, or finding. The judgment must accord with, and be warranted *by the pleadings of the party in whose favor it is rendered.*" In this case in addition to the judgment finding the conveyance fraudulent and void, the court decreed that the grantee held the property in trust for the grantor subject to the payment of the indebtedness. Marshman vs. Conklin 21 N. J. Eq. 546. Parsley vs. Nicholson, 65 N. C. 207. Where a bill contains a prayer for general relief, the complainant will be entitled to any equitable relief *warranted by the facts set out in the bill.* Monmouth Ins. Co. vs. Hutchinson 21 N. J. Eq. 107. Hall vs. Pierce, 4 W. Va. 107. "Under a prayer for general relief *only such relief can be given as as is warranted by facts* POSITIVELY AND CLEARLY *set forth* in the bill." Walker vs. Hill, 21 N. J. Eq. 191. Where a suit was commenced in equity to make a fund liable for the payment of a note attached, and failing in that, praying a judgment upon the note against the maker who was a party, under the prayer for general relief, the relief was refused, because it was inconsistent with the relief demanded in the complaint. Kelly

vs. Downing, 42 N. Y. 71. The granting of a decree therefore for the money against Buffington was erroneous; and that far at least, the bill of review was good and should have been sustained. That was one allegation of error in the bill of review, and the demurrer should have been overruled on that ground alone, if for no other reason. Can it possibly be argued that there is anything alleged in the pleadings that can sustain such a decree as this? If so what is the allegation? And where is it? For what is the judgment rendered? The decree in this case avoids every means of knowing why, or for what reason any relief is granted. It does not allege that anything was found by the court from the evidence, or anything else. We have to guess upon what grounds the court rendered this judgment and from the meager basis we have to form a guess from, it may be wrong. But we *guess* the court rendered the judgment for the value of the personal property sold by Fitzgerrel to Buffington. If that be true, then no judgment was asked for such a claim and none could be asked because the bill alleges that Fitzgerrel himself sold these goods after the bankruptcy and retained the proceeds. This is one reason given in the bill to show that the conveyance was fraudulent. If this was not true then the charge of fraud must fail and the sale be sustained. If it was true then no judgment should be rendered against Buffington because he received nothing and should not pay anything, unless in trespass. Now, which ground will the assignee take? In either case hemust fail, for on one hand his charge of fraud must fail, on the other, a judgment would be inconsistent with the charges in his bill; and no amount is charged to have been received by Buffington, and no facts are "positively and clearly set forth in the bill" as is said to be necessary in Walker vs. Hill. *Supra*; nor could such a decree, "be warranted by the pleadings of the party in whose favor it was rendered," in accordance with the decision of the court in Bachman vs. Sepulveda, *Supra*. If the assignee claims that the judgment was rendered for the accumulated rents and profits of the land the same reasons apply, for the bill alleges as the principal reason that the conveyance of the land was fraudulent, that Fitzgerrel had remained in possession and had received the rents and profits, paid taxes, made improvements, paid insurance, and had never accounted for anything. Now, if this charge were taken out of the bill, there would be no fact stated which would show any fraud in the conveyance and the bill would be bad. Thus the foundation of the action is the alleged fact of remaining in possession, receiving the rents, making no account of them and acting as if they were his own by the bankrupt. Then no judgment could be recovered for the amount of these rents against Buffington. An action of trespass might be brought by the assignee alleging that by the fraudulent act of Buffington in concealing this property and depriving the creditors of the benefit of it they were damaged so

much, a recovery might have been had. But this remedy was in an action at law and not in this proceeding. If this judgment was not rendered either for the value of the personal property or the rents of the real estate, upon what possible grounds could it have been rendered? We submit that there is no chance for it to have been rendered for any other cause, and that being true, that as we have seen the judgment can not be sustained. Therefore the bill of review should have been sustained and allowed upon this ground, if it was bad in every other respect.

The next objection that we make to the sufficiency of this decree is that the judgment itself is for over $100 more than all the claims allowed against the bankrupt; and yet, the assignee is authorized to collect this sum and in addition, all the real estate and other property is placed in his hands by the decree. We take the position that the decree should only have set aside the sale and conveyance of the real estate, and left the matter of the judgment to other proceedings at law where direct allegations were made and a trial had, as to the question of the indebtedness of Buffington. Outside of the facts heretofore argued, that there was a complete and adequate remedy at law, and that there are no allegations in the bill to support the judgment, we now raise the farther point; that too much property is being placed in the hands of an assignee who from anything we know to the contrary, may be far more insolvent than the bankrupt himself. It is true that no allegations are made in the original bill as to the amount of the indebtedness of the bankrupt, and this fact we take to be an additional reason why no judgment in favor of the assignee should have been rendered, because the Circuit Court having neither allegations, nor proof to guide it, as to the amount of indebtedness, no judgment should have been rendered. Suppose the indebtedness of the bankrupt had been four hundred dollars and the court should have rendered a judgment for four thousand dollars. The assignee then would have come into possession of three thousand six hundred dollars that he had no business with and which was not due to him; for, we take it, in any case, neither the creditors, nor the assignee their representative, have anything to do with the property of the bankrupt any farther than is necessary for the collection of their debts. That therefore, neither the original bill filed in this cause is sufficient to support the decree, because of the want of an allegation as to the amount of the indebtedness of the bankrupt, nor can the decree be supported under the pleadings because of the same defect. It is true that a person may become a bankrupt under the law of 1867 by failing to pay his debts for fourteen days although he may have an unlimited amount of property over and above his indebtedness. Yet we imagine before a decree would be rendered setting aside a conveyance made by the bankrupt, the court would require some allegation

and some proof of the amount of the indebtedness and that there were no other means of paying it. Where a suit is brought by creditors bill for that purpose it is necessary to allege and show that every legal means of making the debts has been exhausted by the obtaining a judgment and the return of an execution *nulla bona*. When authority was given an assignee to bring his suit in the Circuit Court, was all these acquirements abandoned? If so how far, and to what extent? The reason why all legal remedies must be exhansed before a creditors bill will be, is because the conveyance is good as to all but creditors and the court will not touch it if the debts can be made out of other property. Courts of chancery will not interrupt a legal conveyance, made with all legal formalities and solemnities unless they are compelled to do so, to enforce some consciencious duty, and then, never unless all other means fail. If the rule is different in bankruptcy why is it so, and how far does it extend? We insist that the fact should be alleged and proven, that there is an indebtedness still existing from the bankrupt to his creditors; what the amount of that indebtedness is; and that there is no means in the hands of the assignee to liquidate it, before the court will, or should enter a decree setting aside a conveyance. Nothing of the kind was alleged, or attempted to be proven in this case. How do we know that there was one dollar of indebtedness existing at the time this bill was filed? And it will be presumed there was none, or the assignee would have sooner filed this bill and have sought to realize the estate for the creditors. We are aware that some difference in pleading and practice should be allowed between suits brought by creditors and those brought by assignees arising from the necessities caused by the difference in the laws under which each is brought; but we submit that no such wide difference as is made in this case, should be allowed. As we understand the duty of an assignee is to take charge of the property of his bankrupt and preserve and realize upon the same for the benefit of his creditors. When that is done his duties end and his authority ceases. The bankrupt may then apply for and receive his discharge, or not as he sees fit. Any and all property, or means that remain after paying the indebtedness proven belongs to the bankrupt and he may do whatever he pleases therewith whether he is discharged, or not. Then is it not necessary in a suit like this that it should be alleged that the indebtedness is *not* paid before a decree is rendered? It may be said that the public records would show the fact, but this is not true. Every dollar of the indebtedness might have been paid years before and still the matter be standing open upon the record. Now, in this case if the bill had alleged the fact, this decree could not have been justified for a moment.

The total indebtedness proven against the bankrupt, we understand to be less than $2500. Yet here is a judgment for $4000;

a sale of land worth $15,000 set aside, beside the amounts received by the assignee from other property, and applied upon the above indebtedness to an amount fully enough, or more tnan will liquidate the whole liability. Yet the assignee alleges nothing of this in his bill, does not even aver that there is *any* indebtedness existing still; gives no excuse for his delay; and in fact avers nothing that in our view of the case confers any jurisdiction to render any decree but one dissmissing the bill.

Another ground of objection that, we make to the Decree and proceedings in this cause is, that the decree makes no reservation of the homestead rights of Isaac Fitzgerrel, although the bill and all the proceedings in the cause show the existence of a homestead right in him. The fourteenth section of the bankrupt-act provides "that there shall be excepted from the operation of the provisions of the bankrupt-law the necessary household and kitchen furniture, and such other articles and necessaries of such bankrupt, as the said assignee shall designate and set apart &c., and such other property not included in the foregoing exceptions as is exempted from levy and sale upon execution, or other process, or order of any court by the laws of the state in which the bankrupt has his domicile at the time of the commencement of the proceedings in bankruptcy, to an amount not exceeding that allowed by such state exemption laws in force in the year eighteen hundred and sixty four, *provided*, that the foregoing exception shall operate as a limitation upon the conveyance of the property of the bankrupt to his assignees; and in no case shall the property hereby exempted pass to the assignees, or the title of the bankrupt thereto be impaired, or affected by the provisions of this act." In the year 1864 and from thence up to the entry of the decree in this suit the laws of Illinois provided that "In addition to the property now exempt by law from sale under execution, there shall be exempt from levey and forced sale, under any process, or order from any court of law, or equity in this state for debts contracted from and after the 4th day of July, 1851, the lot of ground and the buildings thereon, occupied as a residence, and owned by the debtor being a householder and having a family, to the value of $1000." Laws of 1851 P 25. Statutes of Illinois by Gross Page 327.

The original bill in this case alleges; (Page 52 of record) that Fitzgerrel since the pretended convevance of the said land was executed, has occupied and is still in posession of all of said lands, and has had full control of the same and has been occupying, or renting to tenants all of said lands with the buildings thereon &c. To the extent of $1000 worth therein, he had a right to do, so by the laws of the State of Illinois and also by virtue of the laws of the United States. Under the laws of Illinois a man can do as he pleases with his homestead. He can sell it and dispose of it in any way he may see fit, and the proceeds of the sale shall be exempt also, for one year from

the sale. The bill alleges this conveyance was made in 1868 but does not allege that the land was not the homestead of the said Fitzgerrel when he conveyed it. On the contrary it admits the homestead and the answer further sets it up when it alleges the poseession of the property in Fitzgerrel. and if this property or any part of it was the homestead of Fitzgerrel he had a right to convey it, or hold it and the court or assignee would have no power over it.

The homestead right under the laws of Illinois is a sacred right. It is so much so, that a creditor may not enter it against the will of the debtor. No judgment, lien, or other proceeding affects it in any way and it can only be transferred by the solemn, deliberate act of the householder and his wife. It is instituted for the benefit of the family of the householder and in case of his desertion, or death it immediately descends upon the wife and remains in her until the youngest child is twenty one years of age. If sold by the householder the proceeds of the sale are sacred to him for one year thereafter, and can not be touched for debt. The bankruptcy laws of the United States, which are so stringent in other matters, respect this right, and do not permit interference therewith by the assignee, or others. Here then in this case; Fitzgerrel the bankrupt remained in possession of this property; no allegation is made by the assignee of any waiver of any homestead right by the bankrupt; he does not make him a party to the suit; but he takes a decree vesting the whole title to the property in himself without regard to any homestead rights of any one. It is true, as may be said, that the bankrupt may file a bill enjoining the sale of his homestead and asking to have it set off to him; but this would be multiplying suits, which it is the province of a court of chancery to avoid, and which would have been avoided had the bankrupt been made a defendant. And then, if he has capacity to commence a suit, he certainly had capacity to defend one. The assignee would have the right under this decree to proceed and sell this land, ignoring the rights of the bankrupt therein. If it be true that the assignee represents the bankrupt in the suit, then the bankrupt can not afterwards claim his homestead right in the land, because he was in court once through his assignee, and having had his day in court, he can not be again heard. Therefore he loses his homestead, and a positive provision of the law is violated. We insist that the decree in this cause was erroneous because it did not reserve and protect the homestead right, and that for this cause it should be reviewed. If this be true the demurrer should have been overruled.

From all the authorities that we have reviewed then, we arrive at these conclusions. That the demurrer in this case is against opening the enrollment of the decree. The bill of review, containing as it does the whole record and the decree thereon, the demurrer can not be to the bill itself, but raises

the question directly, as to whether there is sufficient error alleged in the bill to authorize the court to set aside the decree and to review the law of the case. The demurrer admits every allegation of the bill of review to be true. Being true then, is the action of the court in entering the decree as it has done in this case, supported by the authorities? If so, the demurrer was properly sustained. But if the court has deviated in any particular alleged, from the law, then it ought to have been overruled, and the proceedings reviewed. As a bill of review according, to all the authorities, is a writ of error to the same court in which the error is committed, the court should have set aside its decree and re-tried the cause, for the same reasons that a court of appeals would have reversed the decision, except that the evidence is not to be considered on a review. Could we have entered upon the evidence in this hearing, we think we could have shown a clear case, but as we are precluded from that, we rely confidently upon the insufficiency of the record. The other grounds of error alleged in the brief are sufficiently elaborated and included in the argument already offered.

We therefore respectfully ask and urge, that the decision of the circuit court sustaining the demurrer and dismissing the bill be reversed, and that the proceedings heretofore had in this case be reviewed, believing that substantial justice will be attained thereby. Respectfully,

THOMAS J. HENDERSON,
Attorney for Appellant.

JAMES McCARTNEY,
JASPER PARTRIDGE,
of Counsel.

Supreme Court of the United States.

OCTOBER TERM, A. D. 1877.

TITUS BUFFINGTON, APPELLANT,

vs.

CHARLES D. HARVEY, ASSIGNEE &c., APPELLEE.

APPEAL FROM THE UNITED STATES CIRCUIT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS, IN THE 8TH JUDICIAL CIRCUIT.

Brief for Appellant.

Page 1st of Printed Record. This suit was commenced by a bill in Chancery filed by Charles D. Harvey claiming to be assignee of Isaac Fitzgerrel an involuntary bankrupt, to set aside the sale by said bankrupt of a stock of chattels, goods and real estate made to Titus Buffington the appellant. Buffington the appellant is made sole defendant to the bill. The bill was filed March 20th, 1872, and alleges that the act of bankruptcy was committed and the sale made by the bankrupt to appellant December 30th, 1867, nearly five years before the filing of the bill.

Page 2nd of Printed Record. That Fitzgerrel in contemplation of insolency and conspiring and confederating with the defendants and one J. H. McCartney to put his property out of his hands, so as to hinder and delay his creditors, and to defeat the operation of the bankrupt law now in force, did with his wife convey all his lands to Buffington his friend and neighbor for $7,950.00, when said lands were worth a much larger sum of money. That said Fitzgerrel at the same time made a pretended sale of all his personal property to said Buffington. That

said sales comprised all the estate both real and personal of said Fitzgerrel which was liable to creditors, or an execution. That no *bona fide* consideration was ever paid by Buffington; that he executed his notes therefor with 6 per cent. interest, without any security therefor.

Page 3rd of Printed Record. That since the conveyance of the land was made said Fitzgerrel has ever occupied and is now in possession of all of said lands, and has had full control of the same, and has been occupying, or renting to tenants all of said lands with the buildings thereon and has collected from said tenants all the rents therefor, and has paid taxes, paid off incumbrances and insurance, and made improvements on said premises the same as if he were the owner in fee, and has never accounted to said Buffington, or to any one for the rents so collected from said tenants. Neither has he, the said Fitzgerrel, paid any rent for the use of the said premises, which he has used and occupied since said conveyance before described. That there has never been any lease, contract, stipulation, or agreement for any definite rent, nor has there been any settlement, or accounting between the said Fitzgerrel and said Buffington for said renting. That no delivery of the personal property was ever made, but it was left under the control and in the possession of the vendor who afterwards as before the said pretended sale, used, sold, and disposed of the same for his own benefit, and has never paid to, accounted for, nor been called to account for the same, or for the proceeds thereof, or any part of the same by said Buffington, although he knew it was long since disposed of. That Fitzgerrel if he ever received the notes aforesaid indirectly surrendered the same to Buffington; that said notes have never been paid or presented for payment, although several thousand dollars is long since due. That Buffington has disposed of all his real estate and personal property; that there is now due from Buffington as represented by said notes between $12.000 and $15.000. That the conveyances were not in the usual course of business, and was a fraud upon the bankrupt act.

Page 4 Printed Record. That the said defendant combining and confederating with the said Fitzgerrel, did accept said conveyances and the pretended transfer of said personal property intending thereby to hinder the creditors of the said Fitzgerrel from collecting their debts, and to defeat the operation of said bankrupt act. Prays that the defendant may upon his oath and to the best of his knowledge, remembrance, information and belief, full, true, direct, and perfect answers make to all and singular the matters hereinbefore stated, as fully and particularly as if the same were hereinafter repeated; that the conconveyances be set aside as null and void, and that the property become assetts of said bankrupt's estate, and that said defendant may be required to give a fair and just value for said personal property, and for the use of the premises upon a fair

accounting; that he be restrained from selling &c. and collecting &c., notes given him &c., that a writ of subpœna be issued against said Buffington. Page 5 Printed Record. Subpœna served on Buffington March 26, 1872. Answer of Buffington filed May 6, 1872. Page 9 Printed Record Exceptions to answer. Page 12. Exceptions sustained and amended answer filed November 25, 1872. Page 14. Exceptions to amended answer. Second amended answer filed under oath admitting the purchase of the property; giving in detail the amount paid for each portion thereof; alleging that it was the full value thereof; that of the amount he agreed to pay for said property he has paid $3300 and the balance is unpaid and outstanding in notes against him which have been transferred; that he took and has retained possession of the land since his purchase, and took possession of and sold the goods and stock; that he has paid the taxes, made improvements &c. Denies all fraud, alleges the transaction *bona fide* &c.

To this answer there was a general replication, evidence taken, and a decree rendered at the January Term, 1873, that, "the conveyances made and delivered on the 30th day of December, A. D. 1867, by the said Isaac Fitzgerrel and Martha Fitzgerrel his wife of the land described in the bill be set aside, annulled and vacated, except as to 3-4 of an acre heretofore sold; that the defendant deliver up possession of the same to complainant; and that the defendant pay the sum of $3891 88-100, for which a judgment was rendered against him; that complainant have execution therefor and that defendant pay the costs.

On the 20th day of February, A. D. 1873, being within said January Term defendant filed his petition for a re-hearing of said cause, alleging in said petition that said Fitzgerrel was declared a bankrupt February 3rd, 1868, and that on March 8th, 1868, one Urich Spring was appointed his assignee, and that on August 22nd, 1876, complainant Charles D. Harvey was appointed assignee more than four years after the conveyance was made which was adjudged null and void; that so much time had elapsed since the making of the original conveyance as to bar the right of the assignee in obtaining the relief sought; that petitioner was much aggrieved by the decree; that it was erroneous because the assignee could not and ought not to sustain the bill upon the facts and statements as alleged, and that the court should have received the answer as a full defense to the cause and dismissed the bill. Which petition the court refused to grant and a re-hearing was refused.

On the 16th day of October, A.D 1873, at the October adjourned term of said Circuit Court said defendant Buffington prayed for and obtained leave to file a bill of review, which was filed on the same day; in which bill of review all the pleadings and evidence on the former trial was set out in full and all the records of the court and proceedings in the cause are prayed to be made a part thereof.

In his bill of review appellant alleges that there were many and manifest errors in the decree all of which he had objected to; that it was erroneous to decree that the deed from Isaac Fitzgerrel and Martha his wife should be set aside when neither of them bad been made parties to the suit, nor did they enter their appearance, nor were they before the court in any way; that it was error to render a judgment for $3891,88 against the defendant for goods which went into his possession, the injunction against selling them having been removed as set up in the sworn answer and not denied in the evidence. That the decree is erroneous in not allowing the defendant Buffington any credit for $600 paid on a mortgage which was on the land when he purchased it from Fitzgerrel and which he had paid before this suit was brought; that the decree was wrong because it gave defendant Buffington no credit for $350, which he paid on one of the notes to a person to whom it was assigned before due; for $550, which he paid on another note to a person to whom it was assigned before maturity; for $600 he paid on a note to George Scott on which he was sued and a judgment rendered against him; and for two notes of $950 each which he had paid to persons to whom the had been assigned before maturity. Also because it was error to render a decree for the value of personal property when there was no proof that it was worth that amount, and that if it was true as alleged, as to the personal property that there was an adequate remedy at law; that no exemption in said decree was made of the homestead of said Fitzgerrel but the conveyance was set aside and the whole property placed in the hands of the assignee; that the evidence does not sustain the decree; that the evidence shows that more than two years have elapsed from the time the conveyance was made until the bill was filed upon which the decree was rendered and that therefore the statute of limitations had run against the action; that the judgment against the defendant was for over $1000 more than there were debts proven against the bankrupt, and that there was no evidence that would in any way tend to sustain the allegation that the conveyance in question was a fraudulent conveyance.

To which bill of review appellee Harvey was made a defendant and it was prayed therein that a review be had of all the former proceedings in said cause, the decree set aside and original bill dismissed &c.

To which bill of review on January 16th, 1874, appellee Harvey filed a general demurrer, and on the 24th day of February, 1874, thereafter the court sustained said demurrer and dismissed the bill. Whereupon appellant prayed and obtained an appeal to the Supreme Court of the United States.

Assignment of Errors.

I. The Court erred in sustaining the demurrer to the bill of review.

II. The Court erred in entering a decree for the complainant in the original bill.

III. The Court erred in overruling the petition for a re-hearing.

IV. The Court erred in finding the issues for the complainant in the original bill.

V. The Court erred in overruling motion to disolve the injunction,

VI. The Court erred in dismissing the bill of review.

Brief of Argument for Appellant.

The Court erred in sustaining the demurrer to the bill of review, because.--

Where a bill of review sets forth various causes for the intervention of the court, and the defendant files a general demurrer, if any one of the causes are good the demurrer must be overruled. Story's Eq. Pl. § 634 to 638. Gould vs. Tancred, 2 Attk. 534. Mitfords Eq. Pl. by Jeremy 203, 204, 240. Cooper's Eq. Pl. 215. Dancer vs. Evett, 1 Vern. 392. Smith vs. Turner, 1 Vern. 273. Webb vs. Bell, 3 Paige 368. Deemy vs. Filmer, 2 Freem. 171. Brown vs. Hagle, 30 Ills. 119.

The demurrer admits everything in the bill that is well pleaded. The foregoing principles are elementary.

Is there any claim, or charge in this bill of review that will give it a standing in court?

The bill alleges, (Page 51 of printed record) that on the 20th of March 1872 Charles D. Harvey assignee in bankruptcy of Isaac Fitzgerrel, exhibited his bill of complaint in the Circuit Court, against your orator Titus Buffington, and then sets forth the original bill in full. Said bill of review then alleges (Page 54 of printed record) that complainant was served with process in that suit March 26, 1872; filed his answer June 10, 1872 which was excepted to &c.; and then sets out in full the complainants answer to the bill; and on page 58 of printed record it is alleged that a general replication was filed to the answer, which was all the pleadings in the cause. The bill then alleges, that issue was joined on said replication, witnesses were examined and proofs closed, cause set down to be heard and on the 3rd day of January 1873 a decree was passed against your orator, and setting out, on Pape 59 of record; that manifest errors existed in said decree, alleging them specifically. This is the proper method of pleading. Adams Eq. 770. Gardner et. al. vs. Emerson et. al., 40 Ills. 295. 1 Peters dig. 366 §§ 7, 13. Cooper's Equity Pleading 95. Story's Eq. Pleadings § 407.

Does the statements in the bill if true entitle the complainant therein to a review?

This bill is brought for error of law appearing upon the face of the decree.

All allegations of bill of review are admitted by the demurrer to be true. Story's Eq. Pl. § 634 & 634 a. Mitford's Eq. Pl.

by Jeremy 204. Deemy vs. Filmer 2 Freem. 172. S. C. 1 Vern. 135. Cooper's Eq. Pl. 215, 216. Slingley vs. Hale, 1 ch. cas. 122. Jones vs. Kenrick 5 Bro. Parl. R. 248. 1 Harris ch. pr. by New'l, 88, Barton's suit in Eq. 218.

On general demurrer to a bill of review if there is any ground of error alleged in the bill which is good the demurrer should have been overruled. Mitford's Eq. Pl. by Jeremy 204. Deemy vs. Filmer, 2 Freem. 172. S. C. 1 Vernon 135. Story's Eq. Pl. § 637, 322, 324. Maddock's Ch. Vol. 2. 536 to 538, 2 Smith's Ch. Pr. 48, 50, 53. Story's Eq. Pl. 403, 404, 405, 407. Cooper's Eq. Pl. 88 et Seq. Gardner vs. Emerson 40 Ills. 296. Story's Eq. Pl. 407. Cooper's Eq. Pl. 95. Getzler vs. Laroni 18 Ills. 511. Adams' Eq. 418. Gould vs. Tancred 2 Atk. 534. Dancer vs. Evett 1 Vern. 392. Partridge vs. Usborn 5 Russ. 195, 244, 253. Lube's Eq. Pl. 179. 2 Dan. Ch. Pr.1626 et Seq. Griggs vs. Geer 3 Gilm. 2. Smith vs. Turner 1 Vern. 273. Webb vs. Bell, 3 Paige 368. Horner vs. Zimmerman et. al. 45 Ills. 21. Forman vs. Stickney et. al. 77, Ills. 575.

The performance of the decree is not necessary before filing a bill of review when the bill alleges the decree to be unjust. This question can in no event be raised on demurrer. Partridge vs. Usborn. 5 Russ. 195, 244, 253. Lube's Eq. Pl. 179, 2 Dan. Ch. Pr. 1626 et. Seq. Griggs vs. Geer 3 Gillman 2. Horner vs. Zimmerman et. al. 45 Ills. 21. Forman vs. Stickney et. al. 77 Ills. 575. The bill of review alleges error in the Circuit Court in making and entering the decree because of the fact that more than two years had expired after the act of bankruptcy and before filing of the bill. Bankrupt Law 1867. Sec. 2. Norton vs. De La Villeleuve 1 Woods 163. Hilliard on Bankruptcy 389. Carr vs. Hilton 1 Curt. 230. Bump on Bankr. 179. Sedgewick vs. Casey 4 Bankr. Reg. 496. In re Krogman 5 Bankr. Reg. 116. Smith vs. Crawford 9, Bankr. Reg. 38. Freelander vs. Hollman 9, Bankr. Reg. 331. Lott vs. De Graffenreid 10 Rich. Eq. 346. Harwood vs. R. R. Co. 17 Wall. 78. Parson's Maratime Law 663. Stearns vs. Page 7 How. 819. Clark Jr. Assignee &c, vs. Iselin et. al. 21 Wall. 360. Comegys vs. McAll 11 Ala. 932. Harris vs. Collins 13 Ala. 388. Pike vs. Lowell 32 Me. 245. 2 Red. 245. Bradshaw vs. Klein 7 Am. Law Reg. 505. Gross Ill. Stat. 1869 31 Sec. 2.

Proper parties were not made defendants in the original bill. The bankrupt should have been joined as a defendant. Story's Eq. Pl. 72. Mit. Eq. Pl. by Jeremy 161, 162, 163 & 164. Daniel's Ch. Pr. 181, et. seq. Spear vs. Campbell et. al., 4 Scam. 424. Lord Redesdale in Mitford Eq. Pl. 133. In re Detert. Krekel J. Chi. L. News 1875, 130. Cox vs. Wilder 2 Dill. C. C. 45, Voegler vs. Montgomery 54 Mo. 577. McFarland vs. Goodman 13, Am. Law. Reg. 697. Adam's Eq. 314. Conklin vs. Foster 57 Ills. 104. Welch vs. Horine 36 Ills. 238. White vs. Clark 36 Ills. 285, Green vs. Marks, 25 Ills. 221. Bonnell vs. Smith 53 Ills. 375. Wiggins vs. Chance 54 Ills. 175. Cald-

well vs. Taggert, 4 Peters 190. West vs. Randall 2 Mason 190. 196. Mechanic's Bank Alex. vs. Seaton et. al. 1 Peters 299. Lovejoy vs. Irelan 17 Maryland 525. Gaylord vs. Kelshaw et. al., 1 Wall. 81. Sewell vs. Russell 2 Paige 175. Beardsley Scythe Co. vs. Foster 36, N. Y. 566. Lawrence vs. Bank of Republic 35, N. Y. 324. Fellows vs. Fellows et. al. 4 Cow. 682. Bennett vs. McGuire 58 Barb. 645. Hamlin vs. Bridge 24 Me. 145. Thompson et. al. vs. McDonald et. al. 2 Dev. & Bat. 463. Vattier vs. Hinde 7 Peters 252. Story vs. Livingston 13 Peters 259. Van Reinsdyk vs. Clark 1 Gall, 371, 630, 9 Cranch 153. Joy vs. Wirtz 1 Wash. C. C. 517. Piatt vs. Oliver 2 McLean 267, N. Ind. R. R. Co. vs. Mich. Cen. R. R. Co. 5 McLean 444. Hopkins vs. Hopkins 4 Strob. Eq. 207. Vallette vs. Whitewater Val. Ca. Co. 4 McLean, 192. Hammond vs. Hudson R. Co 20, Barb. 378. Shaver vs. Brainard 29 Barb. 25. Allison vs. Weller 6 N. Y. Sup. 291. Miller vs. Hall 40 N. Y. 262. Wallace vs. Eaton 5 How. 99. Massey et. al. vs. Allen 17 Wall. 351. Boone vs. Hall 7 Bush, 66. Verselius vs. Verselius 9 Blatch. 189. Sharpe vs. Gamon 2 Vern. 32. Comyn's Dig. Tit. Chancery E. 2. Anon. 1 Vesey Jr. 29. Palk vs. Clinton 12 Vesey 58. Story's Eq. Pl. § 311 et Seq. Ibid. 569. Kerr vs. Rew 5 M. & C. 154. Story's Eq. Jur. § 1481, 1482, et. seq. Weis vs. Wardel Law Rep. 19 Eq. 171. Lloyd et. al. vs. Landers et. al. 5 Maddock's Chy. Rep 282. Lucas et. al. vs. Harris 20 Ills. 165. Vansant vs. Allmon 23 Ills. 33. Loomis vs. Riley 24 Ills. 309. Gray vs. Larrimore 2 Abb. U. S. 542. Bank vs. Carrolton R. R. 11 Wall. 624. Russell vs. Clark's Exrs 7 Cranch 69. Gil. For. Rom. 157. Wormley vs. Wormley 8 Wheat. 451. Mandeville et. al. vs. Riggs 2 Peters 482, 487. Harris vs. Ingleden 3 P. W. 91. Williams vs. Bankhead 19 Wall. 563, 571. Robertson vs. Carson 19 Wall. 99, 105. Cox vs. Wilder et. al. 2 Dillon C. C. 45. Kellogg vs. Russell 11 Blatch. 519. Re Dunkerson 4 Biss. 227. York vs. Cartwright 42 Texas 136. Barney vs. Baltimore 6 Wall. 280. Shields vs. Barrow 17 How. 130. Traders Bank vs. Campbell 14 Wall.——.Mellen, Crawford & Co. vs. Ames et. al. 39 Iowa 283. Wilson vs. Lassen 5 Cal. 114. Fowler vs. McCartney 5 Cushman 509. Ontario Bank vs. Mumford 2 Barb. Ch. 596. Seaman vs. Stoughton 3 Barb. Ch. 344. Cox vs. Wilder 5 Nat. Bankr. Reg. 443. Palk vs. Clinton 12 Vesey Jr. 53. 1 Montague Eq. Pl. 66. Lowther vs. Carlton Barn. 371, 2 Atk. 139. Williams vs. Williams 9 Mod. 299. King vs. Martin 2 Vesey Jr. 641. Edwards on Parties 17. Galle vs. Greenhill Finch 202. Story's Eq. Pl. § 29. Van Heythuysen Eq. Draft. 5. Ward vs Hollins 14 Maryland 158. Prentice vs. Kimball 19 Ills. 320. McMakin vs. McMakin 18 Ala. 576. Gould vs. Hays 19 Ala. 438. Woodward vs. Wood 19 Ala. 213. Chapman vs. Hamilton 19 Ala. 121. Mallow vs. Hinde 12 Wheat. 193. Vose vs. Philbrook 3 Story 336. Burwell vs. Cawood 2 How. 575. Wilson vs. City Bank. 3 Sumner 422. Fell vs. Brown 2 Blatch. C. C. 276. Brown vs. Blount 2 Russ

& M. 83. Willetts vs. Busby 5 Bea. 193. Shields vs Barrow 17 How. 130. Cameron vs. McRoberts 3 Wheat. 591. Florence Sew. Mach. Co. vs. Singer Man'f. Co. 8 Blatch. C. C. 113. Coiron vs. Millandean et. al. 19 How. 113.

There is no allegation in the bill upon which the judgment can be based. Carneal vs Banks 10 Wheat. 181. Gregory vs. Power 3 Litt. 339. Crocket vs. Lee 7 Wheat. 522. Ringold vs. Ringold 1 Harr & J. 11. Rigg vs. Corder 12 Leigh 69. Cloud vs. Whitman 2 Harring. 401. Moury vs. Mason 8 Porter 211. Smith vs. Smitth 1 Ired. Ch. 83. Langdon vs. Roane 6 Ala. 518. Gault et. al. vs. Hoagland et. al. 25 Ills. 266. Hall et al vs. Towne 45 Ills. 493. White vs. Morrison 11 Ills. 361. McKay vs. Biisset et. al. 5 Gilm. 505. Harrison vs. Nixon 9 Peters 483. Boon vs. Chiles 10 Peters 177. 1 Smith's Ch. Pr. 346. Rowan vs. Kirkpatrick et. al. 21 Ills. 17. Chaffin vs Heirs of Kimball 23 Ills. 36. Ohling vs. Luitjens 32 Ills. 23. Price vs Blackmore 65 Ills. 386. Helm vs. Cantrell 59 Ills. 529. Story's Eq. Pl. § 257, 1 Dan. Ch. Pr. 377. Kirkpatrick vs. Beatty 1 Gilm. 455. Primmer vs. Patton 32 Ills. 528. Brainard vs. Arnold 27 Conn. 617. Bailey vs. Rider 10 N. Y. 363. Crockett vs Lee 7 Wheat. 522. Jackson vs. Ashton 11 Peters——James vs. McKernon 6 Johns. 564. Woodworth vs. Huntoon 40 Ills. 132. Means vs. Means 42 Ills. 50. Mitford's Eq. Pl. by Jeremy 38,39. Colton vs Ross 2 Paige 396. Lloyd vs Brewster 4 Paige 537. Walker vs. Deveraux 4 Paige 229. Fostor vs. Cock 1 Hawk. 509 Lingan vs. Henderson 1 Bland 252. Pleasants vs. Glasscock 1 Sme. & Mar. 17, 24, 25. Bebee vs. Bank of N. Y. 1 John. 559. Williams vs. Shaw 3 Russ. 178 note. Hiern vs. Mill 13 Vesey 119. Dan. Ch. Pr. 386. Stephens vs. Guppy 3 Russ. 171. Roche vs Morgell 2 S ch. & Lef. 721. Ferraby vs. Hobson 2 Phil. 255. Chapman vs. Chapman 13, Beav. 308. Smith vs. Smith 1 Ired. Eq. 83. Rochester vs. Anderson Litt. Sel. Ca. 146. Jones vs. Parish Mont. 3 Swan'st 208. Legal vs. Miller 2 Vasey 299. Lord Walpole vs. Lord Orford 3 Vesey 416. Scudder vs. Young 25 Me. 153. Cooper's Eq. Pl. 14. Bump on Fraud. Con. 537. Walthal vs. Rives 34 Ala. 91. Strike vs. McDonald 2 Harris & Gill. 191. S. C. 1 Bland 57. Wilson vs. Horr 15 Iowa 489. Roberts vs. Gibson 6 Har & J. 116. Tripp vs. Vincent 3 Barb. Ch. 613. Bailey vs. Ryder 10 N. Y. 363. Chalmers vs. Chambers 6 Har & J. 29. Hobson vs. McArthur 16 Peters 182. Reed vs. Cramer 1 Green Ch. 277. Franklin vs. Osgood 14 John. 527. English vs. Foxall 2 Pet. 595. Kibler vs. Whiteman 2 Harr. 401.

The homestead right should have been preserved in the land. Bankrupt law 1867. Gross Stat. of Ills. 1869, 327.